

The Native Passenger Ships Bill, 1886.
(Chapter V.—Penalties.—Sections 34-44.)

[Act VIII,
1876, s. 32.]

34. If a master fails to comply with any of the requirements of section 22 or section 23, as to the statement of passengers, or wilfully makes any false entry or note in or on any such statement, or wilfully fails to obtain any such supplementary certificate as is mentioned in section 19, or to report deaths as required by section 20, or to obtain any such fresh certificate, or to make any such statement of the number of additional passengers, as is mentioned in section 24, he shall be punished with fine which may extend to five hundred rupees for every such offence, or with imprisonment for a term which may extend to three months, or with both.

[Act VIII,
1876, s. 33.]

35. If a master, after having obtained any of the certificates mentioned in section 9, section 19 or section 24, fraudulently does or suffers to be done anything whereby the certificate becomes inapplicable to the altered state of the ship, her passengers, or other matters to which the certificate relates, he shall be punished with fine which may extend to two thousand rupees, or with imprisonment for a term which may extend to six months, or with both.

[Act VIII,
1876, s. 34.]

36. If a master wilfully, and without satisfactory excuse, omits to supply to any passenger the allowance of food, fuel and water prescribed by the rules under this Act, he shall be punished with fine which may extend to twenty rupees for every passenger who has sustained detriment by the omission.

[Act VIII,
1876, s. 35.]

37. If the master of a ship to which section 26 applies wilfully fails to touch at Aden, or leaves that port without having obtained a bill of health under that section, he shall, for every such offence, be punished with fine which may extend to two thousand rupees, or with imprisonment for a term which may extend to six months, or with both.

[Act VIII,
1876, s. 36.]

38. (1) If a ship has on board a number of passengers which, regard being had to the time of the year and other circumstances, is greater than the number allowed by the certificate, or, on arriving from a port where a certificate could not be procured, has on board a number of passengers exceeding the number allowed by this Act for the ship, the master and owner shall, for every passenger over and above the number allowed by the certificate or by this Act, as the case may be, be each punished with fine which may extend to twenty rupees, and the master shall further be liable for each of the passengers over and above that number to imprisonment for a term which may extend to one week:

Provided that the aggregate term of imprisonment awarded under this section shall not exceed six months.

(2) Any officer authorized in this behalf by the Local Government may cause all passengers over and above the number allowed by the certificate or by this Act, as the case may be, to disembark, and may forward them to any port of British India, and may recover the cost of so forwarding them from

the master or owner of the ship as if the cost was a fine imposed under this Act, and a certificate under the hand of that officer shall be conclusive proof of the amount of the cost aforesaid.

39. If a ship bringing native passengers from any port or place beyond British India, into any port or place in British India, has on board a number of

passengers greater either than in the proportion prescribed by section 18 or section 21 or under section 57 (as the case may be) or than the number allowed by the license or certificate, if any, granted in respect of the ship at her port or place of departure, the master and owner shall, for every passenger in excess of that proportion or of that number, be each punished with fine which may extend to twenty rupees.

40. If the master of a ship to which this Act applies lands any passenger at any port or place other than the port or place at which the passenger may have contracted to land, unless with his previous consent, or unless the landing is made necessary by perils of the sea or other unavoidable accident, the master shall, for every such offence, be punished with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to a month, or with both.

41. If a ship, otherwise than by reason of perils of the sea or other unavoidable accident, touches at any port or place in contravention of any express or implied contract or engagement with the passengers, or assurance to them, with respect to the voyage which the ship was to make and the time which that voyage was to occupy, whether the contract, engagement or assurance was made by public advertisement or otherwise, the master and owner shall each be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to three months, or with both.

42. If the master or medical officer of any such ship as is referred to in section 26 wilfully breaks, or omits or neglects to obey, any rule under this Act applicable to the ship, he shall be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to three months, or with both.

43. If a ship sailing from or to any port in British India to or from any port in the Red Sea and carrying more than one hundred passengers has not on board a medical officer as required by section 28, the master of the ship shall be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to three months, or with both.

44. If a ship sailing from or to any port in British India to or from any port in the Red Sea is not principally propelled by steam, the master and owner shall each be punished with fine which may extend to five hundred rupees, or with imprisonment which may extend to three months, or with both.

Penalty on master and owner of certain ships not propelled by steam. If a ship sailing from or to any port in British India to or from any port in the Red Sea is not principally propelled by steam, the master and owner shall each be punished with fine which may extend to five hundred rupees, or with imprisonment which may extend to three months, or with both.

The Native Passenger Ships Bill, 1886.
(Chapter V.—Penalties.—Sections 45—50.—Chapter VI.—Supplemental Provisions.—Sections 51-53.)

XVII, 47.] 45. If the master of a ship to which a direction under section 30 applies knowingly receives on board the ship any person in contravention of that section, he shall be punished with fine which may extend to five hundred rupees for each person so received, or with imprisonment which may extend to three months, or with both.

Procedure.

III, 39.] 46. (1) Offences against this Act shall be punishable by a Magistrate.

(2) If the person on whom a fine is imposed under this Act is the master or owner of a ship and the fine is not paid at the time and in the manner prescribed by the order of payment, the Magistrate may, in addition to the ordinary means prescribed by law for enforcing payment, direct by warrant the amount remaining unpaid to be levied by distress and sale of the ship, her tackle, furniture and apparel.

III, 40.] 47. For the purpose of the adjudication of penalties under this Act, every offence against its provisions shall be deemed to have been committed within the limits of the jurisdiction of the Magistrate of the place where the offender is found.

III, 41.] 48. The penalties to which masters and owners of ships are made liable by this Act shall be enforced only on information laid at the instance of the officers appointed to grant certificates under this Act, or, at any port or place where there is no such officer, at the instance of the Chief Officer of Customs.

III, 42.] 49. A Magistrate imposing a fine under this Act may, if he thinks fit, direct the whole or any part thereof to be applied in compensating any person for any detriment which he may have sustained by the act or default in respect of which the fine is imposed or in or towards payment of the expenses of the proceedings.

III, 43.] 50. (1) Whenever, in the course of any legal proceeding under this Act, the testimony of a witness is required in relation to the subject-matter of the proceeding, any deposition that he may have previously made in relation to the same subject-matter before any Justice or Magistrate in Her Majesty's dominions (including all parts of India other than those subject to the same Local Government as the port or place where the proceeding is instituted), or before any British consular officer elsewhere, shall be admissible in evidence on proof that the witness cannot be found within the jurisdiction of the Court in which the proceeding is instituted:

Provided that the deposition shall not be admissible unless—

- (a) it is authenticated by the signature of the Justice, Magistrate or consular officer;
- (b) it was made in the presence of the person accused; and
- (c) the fact that it was so made is certified by the Justice, Magistrate or consular officer.

(2) It shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition; and in any criminal proceeding, such certificate as aforesaid shall, unless the contrary is proved, be sufficient evidence of the accused having been present in manner thereby certified.

CHAPTER VI.

SUPPLEMENTAL PROVISIONS.

51. (1) The Chief Officer of Customs, or the [Act VIII, 1876, s. 44.] officer, if any, appointed under this Act, at any port or place within British India at which any ship to which this Act applies touches or arrives, shall, with advertence to the provisions of this Act, send any particulars which he may deem important respecting the ship and the passengers conveyed therein to the officer at the port from which the ship commenced her voyage, and to the officer at any other port within British India where the passengers or any of them embarked.

(2) Any officer appointed under this Act may, at any port or place in British India at which a ship to which this Act applies touches, board the ship and inspect her in order to ascertain whether the provisions of this Act as to the number of passengers and other matters have been complied with.

52. In any proceeding for the adjudication of [Act VIII, 1876, s. 45.] any penalty incurred under this Act, any document purporting to be a report of such particulars as aforesaid or a copy of the proceedings of any Court of Justice duly authenticated, and also any like document purporting to be made and signed by any person lawfully exercising consular authority on behalf of Her Majesty in any foreign port, shall be received in evidence, if it appears to have been officially transmitted to any officer at or near the place where the proceeding under this Act is had.

53. (1) The Governor-General in Council may [Act VIII, 1876, s. 46.] make rules consistent with this Act, to regulate, in the case of any ship or class of ships to which this Act applies, all or any of the following matters:—

- (a) the scale on which provisions, fuel and [New.] water are to be supplied to the passengers or to any class or classes of passengers, and the quality of the provisions, fuel and water;
- (b) the medical stores and other appliances and fittings to be provided on board for maintaining health, cleanliness and decency;
- (c) the licensing and appointment of medical [Act XVII, 1883, s. 8.] officers in cases where they are required under this Act to be carried;
- (d) the boats, anchors and cables to be provided on board;
- (e) the instruments for purposes of navigation to be supplied;
- (f) the apparatus for the purpose of extinguishing fires on board and the precautions to be taken to prevent such fires;
- (g) the provision of means for making signals [New, cf. 39 of distress, and the supply of lights & 40 Vic., c. 80, s. 21.] inextinguishable in water and fitted for attachment to life-buoys;

The Native Passenger Ships Bill, 1886.
(Chapter VI.—Supplemental Provisions.—Sections 54-59.)
(Schedule.—Enactments repealed.)

[Act XVII, 1883, s. 8.] (k) the functions of the master, medical officer (if any) and other officers of the ship during the voyage;

[Act XVII, 1883, s. 8.] (i) the access of between-decks passengers to the upper deck; and

(j) generally, to carry out the purposes of this Act.

[New.] (2) The Local Government may make rules consistent with this Act to regulate, in the case of any ship or class of ships to which this Act applies, the local limits within which, and the time and mode at and in which, passengers are to be embarked or discharged at any port or place appointed under this Act in that behalf.

[New.] (3) In making a rule under this section, the authority making it may direct that a breach of it shall be punishable with fine which may extend to two hundred rupees, and, when the breach is a continuing breach, with a further fine which may extend to twenty rupees for every day after the first during which the breach continues.

[New.] 54. (1) An authority making rules under the last foregoing section shall, before making them, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made in such manner as the Governor-General in Council, by notification in the *Gazette of India*, prescribes.

(3) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(4) The authority making the rules shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) A rule made under the last foregoing section shall not take effect if it is made by the Governor-General in Council until it has been published in the *Gazette of India*, and if it is made by the Local Government until it has been published in the local official Gazette.

(6) The publication in the Gazette of a rule purporting to be made under that section shall be conclusive proof that it has been duly made.

55. The Local Government shall appoint such persons as it thinks fit to exercise and perform the powers and duties conferred and imposed by this Act.

56. The Governor-General in Council may declare, by notification in the *Gazette of India*, what shall be deemed to be, for the purposes of this Act, "seasons of fair weather" and "seasons of foul weather," and, for sailing vessels and steamers respectively, a "long voyage" and a "short voyage."

57. The Governor-General in Council may by order prescribe, in the case of any ship or class of ships and for all or any voyages to which this Act applies, the number of superficial or of cubic feet of space to be available for passengers; and the order shall override the provisions of sections 18 and 21 so far as they apply to that ship or class of ships.

58. The Local Government may, with the previous sanction of the Governor-General in Council, for any special reason and subject to such conditions as it thinks fit, exempt any ship or class of ships from any provision of this Act.

59. All powers conferred by this Act may be exercised from time to time as occasion requires.

SCHEDULE.

ENACTMENTS REPEALED.

(See section 4.)

Number and year.	Title.	Extent of repeal.
VIII of 1876	Native Passenger Ships Act, 1876.	The whole.
XVII of 1883	Native Passenger Ships Act, 1883.	The whole.
VII of 1884	Indian Steamships Act, 1884.	Section 41.

STATEMENT OF OBJECTS AND REASONS.

The law relating to native passenger ships is contained in three enactments, namely, the Native Passenger Ships Act, VIII of 1876, and the amending Acts, XVII of 1883 and VII of 1884. Further amendments having now become necessary, the opportunity has been taken to consolidate the law in a single measure.

2. The amendments are not numerous and will be noticed in the order in which they occur in the Bill—

(a) *Section 2.*—The primary object of the proviso to sub-section (2) of this section is to confer on the Government of Bombay the power of having certain small vessels engaged in the pilgrim-trade between Western India and the Hedjaz examined with a view to ascertaining whether or not they are seaworthy.

(b) *Section 11, clause (c).*—The corresponding section of the Act of 1876 requires certificate B to state that provisions, fuel and pure water sufficient for the voyage have been placed on board. It is now proposed to require the certificate to state that the supply is sufficient not only for the voyage but for any probable period of detention in quarantine. On one occasion at least the Government has had to undertake the maintenance of a shipload of pilgrims whose private stock of provisions had become exhausted.

- (c) *Section 41.*—Cases have occurred in which pilgrims who had engaged their passages on the understanding that they would proceed direct to the Hedjaz have been taken on long coasting voyages. The deception thus practised has caused great hardship, pilgrims very frequently taking their own provisions with them (section 18, Act VIII, 1876) and very rarely taking more than is absolutely necessary for their support on the voyage which they believe themselves to have undertaken.
- (d) *Section 53, sub-section (1), clause (g).*—It is proposed, following section 21 of the English Merchant Shipping Act, 1876, to empower the Governor-General in Council to require native passenger ships to be provided with means for making signals of distress and with life-saving apparatus.
- (e) *Section 53, sub-section (2).*—This sub-section is designed to meet a suggestion made by Mr. T. M. Cook, of the firm of Messrs. Thomas Cook & Son, that the embarkation of pilgrims in the "Roads" at Bombay during the monsoon should be forbidden, and that pilgrim-carrying ships should be required to go into dock for the purpose of receiving their passengers during that season.
- (f) *Section 54.*—This section requires drafts of any rules which it is proposed to make under the Act to be published for the information of the public before the rules are made.

The 25th August, 1886.

A. COLVIN.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 1st September, 1886:—

NO. 21 OF 1886.

A Bill to extend the Glanders and Farcy Act, 1879, to the Bombay Presidency.

WHEREAS it is expedient that the Glanders and Farcy Act, 1879, should extend to the territories administered by the Governor of Bombay in Council; It is hereby enacted as follows:—

XX of 1879.

1. The words "the Governor of Bombay in Council" in section 1 of the Glanders and Farcy Act, 1879, are hereby repealed.

XX of 1879.

STATEMENT OF OBJECTS AND REASONS.

OCCASION having arisen in the Bombay Presidency, as it did in Upper India in 1879, for a law to provide for the better prevention of glanders among horses, the Government of Bombay has expressed a wish that the Glanders and Farcy Act, 1879, may be extended to the Bombay Presidency.

The object of this Bill is to give effect to that wish.

The 1st September, 1886.

C. P. ILBERT.

S. HARVEY JAMES,
Offg. Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 1st September, 1886:—

NO. 22 OF 1886.

A Bill for further shortening the language used in Acts of the Governor-General in Council, and for other purposes.

WHEREAS it is expedient further to shorten the language used in Acts made by the Governor-General in Council, and to make certain further provisions relating to those Acts; It is hereby enacted as follows:—

1. (1) This Act may be called the General Short title and commencement. Clauses Act, 1886; and
(2) It shall come into force at once.

PART I.

ADDITIONAL CLAUSES.

2. This Part shall apply to this Act and to all Acts made by the Governor-General in Council under the Indian Councils Act, 1861, after the passing of this Act.

3. In any Act to which this Part applies, unless there is something repugnant in the subject or context,—

(1) "abet," with its grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code:

(2) "Chapter," "Part" and "schedule" shall denote, respectively, a Chapter and Part of, and schedule to, the Act in which the word occurs:

(3) "sub-section" shall denote a sub-section of the section in which the word occurs:

(4) "commencement", used with reference to an Act, shall mean the day on which the Act comes into force:

(5) "financial year" means the year commencing on the first day of April: [Act I, 1883, s. 2.]

(6) "local authority" shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund: [Act XIII, 1885, s. 3 (7).]

(7) "master," used with reference to a ship, means any person (except a pilot or harbour-master) having for the time being control or charge of the ship: [Act V, 1883, s. 3.]

(8) "offence" shall mean any act or omission made punishable by any law for the time being in force: [Act X, 1882, s. 4 (p).]

(9) "public nuisance" shall have the meaning assigned to that expression in section 268 of the Indian Penal Code: [Act XLV, 1860, s. 268.]

(10) "registered" shall mean registered under the law for the time being in force for the registration of documents: [Act VIII, 1885, s. 3 (18).]

(11) "sign", with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include "mark," with its grammatical variations and cognate expressions: [Act XIV, 1882, s. 2; Act VI, 1886, s. 3.]

(12) "ship" includes every description of vessel used in navigation not exclusively propelled by oars: [Act V, 1883, s. 3.]

(13) "soldier" shall mean a person who is a soldier within the meaning of the Army Act, 1881: [cf. 44 & 45 Vic., c. 58, ss. 176 (1) and 190 (6) and (8).]

(14) "value", used with reference to a suit, shall mean the amount or value of the subject-matter of the suit: and [Act XVIII, 1884, s. 3 (8).]

(15) "write", with its grammatical variations and cognate expressions, shall include "print" and "lithograph", with their grammatical variations and cognate expressions. [Act X, 1882, s. 4 (e); and Act XIV, 1882, s. 2.]

4. Where, by an Act to which this Part applies and which is not to come into force immediately on the passing thereof, a power is conferred on the Governor-General in Council or on a Local Government or a High Court to make rules, or to issue orders with respect to the application of the Act, or with respect to the establishment of any Court or office

or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act, the power may be exercised at any time after the passing of the Act, but rules or orders so made or issued shall not take effect till the commencement of the Act.

[Act X, 1882,
s. 557.]

5. Any power conferred on the Governor-General in Council or a Local Government by an Act to which this Part applies may be exercised from time to time as occasion requires.

[cf. Act XI,
1886, s. 26.]

6. Where, by an Act to which this Part applies, a power to make rules is expressed to be given subject to the condition of the rules being made after previous publication, the following provisions shall apply, namely:—

(1) The authority having power to make the rules shall, before making them, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Governor-General in Council or the Local Government prescribes.

(3) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(4) The authority having power to make the rules, and, where the rules are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider the objection or suggestion which may be received by the authority having power to make the rules from any person with respect to the draft before the date so specified.

(5) The publication in an official Gazette of a rule purporting to have been made in exercise of a power to make rules after previous publication shall be conclusive proof that the rule has been duly made.

[cf. 45 & 46
Vic., c. 50, s.
230.]

7. (1) Where a limited time from any date or from the happening of any event is appointed or allowed, by an Act to which this Part applies, for

the doing of any act or the taking of any proceeding in a Court or office, and the last day of the limited time is a day on which the Court or office is closed, then the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

(2) Where, by an Act to which this Part applies, any act or proceeding is directed or allowed to be done or taken in a Court or office on a certain day, then, if the Court or office is closed on that day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

(3) This section does not apply to any act or proceeding to which the Indian Limitation Act, XV of 1877, applies.

8. Where an act or omission constitutes an offence under two or more enactments of which either or any is an Act to which this Part applies, the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

PART II.

SUPPLEMENTAL PROVISIONS.

9. The words "wholly or partially" shall be inserted before the word "repealed" in clause (1) of section 3 of the General Clauses Act, 1868, and shall be deemed to have been there from the commencement of that Act.

10. In the Cantonments Act, 1880, the word "soldier" shall not include a warrant-officer but shall otherwise have the meaning assigned to it by clause (13) of section 3 of this Act.

11. This Act and the General Clauses Act, 1868, shall apply to all Regulations which may receive the assent of the Governor-General under the Statute 33 Victoria, chapter 3, section 1, after the commencement of this Act.

STATEMENT OF OBJECTS AND REASONS.

THIS Bill is supplementary to the General Clauses Act, 1868, and is designed, as stated in the preamble, to further shorten the language used in Acts of the Governor-General in Council.

2. In section 3 there is nothing which calls for remark. The definitions in the section will materially shorten the defining clauses of Acts to be hereafter passed.

3. Section 4 is a repetition of a clause very generally employed by the Council of the Governor-General with the object of enabling the executive authorities, in the interval between the passing of an Act and its coming into force, to make preparations for bringing the Act into full operation as soon as it is legally possible to do so.

4. The English rule that a power given to the Crown by statute, having been once exercised, is exhausted and cannot be exercised again, has been applied by Indian Courts to powers conferred by the Indian legislature on the Governor-General in Council and Local Governments. Section 5 of the Bill is intended to remove the inconvenience resulting from the application of that rule.

5. Provisions in the terms of section 6 have been inserted in no fewer than eighteen Acts during the last three or four years and form part of several pending Bills. Their object is to give persons likely to be affected by statutory rules an opportunity, before the rules are made, of making objections and suggestions with respect to any matter which it is proposed to insert in them.

6. Section 7 is taken from the English Municipal Corporations Act, 1882, and is much needed in this country in the case of acts and proceedings to which the Indian Limitation Act, 1877, does not apply.

7. Section 8 is a repetition of a section which is very frequently inserted in Acts of the Governor-General in Council.

8. Clause (1) of section 3 of the General Clauses Act, 1868, has always been construed by the legislature as though the words "wholly or partially" were inserted before the word "repealed." It is proposed by section 9 of the Bill to insert those words in the clause and to require them to be deemed to have been there since the Act of 1868 was passed.

9. Difficulty has been experienced by some Courts in interpreting the word "soldier" in section 14 of the Cantonments Act, III of 1880. With the judgment of the High Court for the North-Western Provinces at I. L. R. 3 All. 214, to the effect that a warrant-officer is not a soldier within that section, the military authorities are content; but they consider it desirable that the word should have a wider meaning than has recently been assigned to it in Oudh, where the Judicial Commissioner has held a private in an European regiment, employed as a telegraph-signaller, not to be a soldier within the meaning of the section.

10. Section 11 of the Bill applies the General Clauses Act, 1868, and the proposed General Clauses Act, 1886, to Regulations to be hereafter made under the Statute 33 Vic., chapter 3.

The 1st September, 1886.

C. P. ILBERT.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 1st September, 1886:—

NO. 23 OF 1886.

A Bill to amend the Code of Civil Procedure and the Indian Limitation Act, 1877.

WHEREAS it is expedient to amend the Code of Civil Procedure and the Indian Limitation Act, 1877; It is hereby enacted as follows:—

1. (1) This Act may be called the Civil Procedure Code Amendment Act, 1886; and

(2) It shall come into force on the first day of January, 1887.

2. (1) In this Act "section" means a section, and "Chapter" a Chapter, of the Code of Civil Procedure.

(2) All references to that Code made in enactments heretofore passed or hereafter to be passed shall be read as if made to that Code as amended by this Act.

3. The second paragraph of section 8 is hereby repealed.

4. In section 17, after Explanation II, the following shall be inserted, namely:—

"EXPLANATION III.—In suits arising out of contract, the cause of action arises within the meaning of this section at any of the following places, namely:—

- (i) at the place where the contract was made,
- (ii) at the place where the contract was to be performed, and
- (iii) at the place where in performance of the contract any money to which the suit relates was expressly or impliedly payable."

5. In section 27, after the words "the Court may" the words "at any time" shall be inserted.

6. In section 53, for the words "at or before the first hearing" the words "at any stage of the suit" shall be substituted.

7. Section 95 is hereby repealed.

8. In section 137, after the word "pleader" the words "or recognised agent" shall be inserted.

9. (1) For the proviso to section 141 the following shall be substituted, namely:—

"Provided that—

(a) if the document is an entry in a shop-book or other book, the party on whose behalf the book is produced may furnish a copy of the entry; and

(b) if the document is an entry in a record produced from a public office or by a public officer, or an entry in a book belonging to a person other than a party on whose behalf the book is produced, the Court may require a copy of the entry to be furnished—

(i) where the record or book is produced on behalf of a party, then by that party, or

(ii) where the record or book is produced in obedience to an order of the Court acting of its own motion, then by either or any party;

and the copy of the entry may be endorsed as aforesaid and shall be filed as part of the record, and the Court shall mark the entry and shall then return the book or record to the person producing it."

(2) To the same section the following shall be added, namely:—

"If a party required under this section to furnish a copy of an entry in a record or book fails to comply with the requisition, the Court may cause the copy to be made and order the cost thereof to be levied by attachment and sale of the moveable property of the defaulting party."

10. To section 216 the following shall be added, namely:—

"The provisions of this section shall apply whether the set-off is admissible under section 111 or otherwise."

11. For the proviso to section 245 the following shall be substituted, namely:—

Amendment of section 245.

"Provided that, in the case of a decree for money,—

(a) if the Court has reason to believe that the decree can be satisfied by execution against the property of the debtor, it may in its discretion refuse execution against his person;

(b) the value of the property attached shall, as nearly as may be, correspond with the amount for which the decree has been made."

12. (1) In section 266, for clause (h) the following shall be substituted, namely:—

Amendment of, and addition to, section 266.

"(h) the salary of a public officer or of any servant of a Railway Company to the extent of—

(i) the whole of the salary where the salary does not exceed twenty rupees;

(ii) twenty rupees where the salary exceeds twenty rupees and does not exceed forty rupees; and

(iii) one moiety of the salary in any other case."

(2) In the same section, after clause (l), the following shall be inserted, namely:—

24 & 25 Vic.,
c. 67.

"(m) any allowance declared by any law passed under the Indian Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council to be exempt from liability to attachment or sale in execution of a decree."

13. In section 271, between the words "or shall" and the words "break open any outer door of a dwelling-house" the words "without the special order of the Court causing the execution of the process" shall be inserted.

Amendment of section 271.

Addition to section 320.

14. To section 320 the following shall be added, namely:—

[I. L. R. 5
All. 314.]

"The rules may also provide for the cases in which, the authorities to which, and the conditions on which, orders passed by the Collector or his subordinates under this Code or the rules thereunder shall be subject to appeal, and for the revision of the proceedings of appellate authorities in respect of those orders."

[I. L. R. 7
Bom. 332.]

"In executing a decree transferred to the Collector under this section, the Collector and his subordinates shall be subject to the control of the Court only to the extent expressly provided by this Code."

15. (1) In section 341, after clause (f), the following shall be inserted, namely:—

Addition to section 341.

"or

"(g) if his discharge is ordered by the Government on the ground of his suffering from any infectious or contagious disease, or by the District Court or, in a presidency-town, the committing Court on the ground of his suffering from any serious illness."

(2) In the proviso to the same section the word "committing" shall be inserted before the word "Court."

16. (1) In section 349, for the words "is under arrest" the words "is in custody under the foregoing provisions of this Code" shall be substituted.

Amendment of Chapter XX.

(2) In section 350, for the words "judgment-debtor's discharge" the word "application", and for the words "is not entitled" the words "ought not", shall be substituted.

(3) For section 351 the following shall be substituted, namely:—

"351. (1) If the Court is satisfied that the statements in the application Declaration of insolvency and appointment of receiver. are substantially true, the Court may declare the judgment-debtor to be an insolvent and appoint a receiver of his property."

"(2) If the Court is not so satisfied, it shall reject the application."

(4) In section 352 the word "then" shall be repealed, and to that section the following shall be prefixed, namely:—

"When the Court has declared the judgment-debtor to be an insolvent."

[I. L. R.
All. 268.]

(5) To section 355 the following shall be added, namely:—

"In determining whether the insolvent should be discharged, and, if so, on what conditions, the Court shall have regard to whether he has committed any of the acts of misconduct referred to in section 359."

(6) In section 357 the figures and word "351 or" shall be omitted in each place where they occur.

(7) In section 359, for the words "Whenever, at the hearing under section 350 it is proved that the applicant has—" the words "Whenever in the course of proceedings on an application under this Chapter it is proved that the judgment-debtor has—" shall be substituted.

(8) For the second paragraph of section 360 the following shall be substituted, namely:—

[I. L. R.
Bom. 19
7 All. 314.]

"A Court so invested may entertain an application under section 344 by any person who has been arrested or imprisoned, or against whose property an order of attachment has been made, in execution of a decree for money passed by that Court."

17. (1) For sections 363 and 364 the following shall be substituted, namely:—

Amendment of Chapter XXI.

"363. If there are more plaintiffs than one, and any of them dies; and if the right to sue does not survive to the surviving plaintiff or plaintiffs alone, but survives to him or them

and the legal representative of the deceased plaintiff jointly, the Court shall cause the legal representative, if any, of the deceased plaintiff to be made a party, and shall cause an entry to that effect to be made on the record, and the suit shall thereupon proceed."

[I. L. R.
Cal. 54
Mad. 11
All. 693
Jah. 10
Vol. 32
7, Civil
ment N
Rules
Judicial
Acts. I]

(2) For section 365 the following shall be substituted, namely :—

“365. In case of the death of a sole plaintiff or sole surviving plaintiff, the legal representative of the deceased may, where the right to sue survives, apply to the Court, at any time before an order for the abatement of the suit is passed, to have his name entered on the record in place of the deceased plaintiff, and thereupon the Court shall enter his name and the suit shall proceed.”

(3) In section 366 the words “within the time limited by law” are hereby repealed.

(4) In the third paragraph of section 368, between the words “the plaintiff may” and the words “make an application” the words “at any time before an order for the abatement of the suit is passed” shall be inserted.

(5) In the last paragraph of section 368, the words “within the period prescribed therefor” and the words “unless he satisfies the Court that he had sufficient cause for not making the application within such period” are hereby repealed.

(6) To section 368, as amended by this section, the following shall be added, namely :—

“The legal representative of a deceased defendant may apply to have himself made a defendant in place of the deceased defendant, and the provisions of this section, so far as they are applicable, shall apply to the application and to the proceedings and consequences ensuing thereon.”

18. To section 381 the following shall be added, namely :—

“Where a suit is dismissed under this section, the plaintiff may apply for an order to set the dismissal aside, and, if it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from furnishing the security within the time fixed, the Court shall set aside the dismissal upon such terms as to costs or otherwise, as it thinks fit, and shall appoint a day for proceeding with the suit.

“The dismissal shall not be set aside unless the plaintiff has served the defendant with notice in writing of his application.

“The provisions of this Code and of the Indian Limitation Act, 1877, with respect to an application and order under section 103 shall, so far as they can be made applicable, apply to an application for an order, and to an order, for setting aside a dismissal under this section.”

19. In section 386, for the words “of a High Court” the words “or other person” shall be substituted.

20. To section 396 the following shall be added, namely :—

“If it appears to the Court that the property, by reason of its nature or of the number of the parties interested therein or of any other circumstance, cannot conveniently be divided, the Court may, if it thinks fit, on the request of any of the parties interested and notwithstanding the dissent of any others of them, pass a decree for the sale of the property and for the distribution of the proceeds among the parties according to their respective rights in the property.”

21. In section 419, after the words “Government Pleader in any Court” the words “or such other person as the Local Government may for any Court appoint in this behalf” shall be inserted.

22. To section 432 the following shall be added, namely :—

“An appointment under this section may be made for the purpose of a specified suit or of several specified suits, or for the purpose of all such suits as it may from time to time be necessary to prosecute or defend on behalf of the Prince or Chief.”

23. For section 433 the following shall be substituted, namely :—

“433. (1) Any such Prince or Chief, and any ambassador or envoy of a Foreign State, may, with the consent of the Governor-General in Council certified by the signature of one of the Secretaries to the Government of India (but not without such consent), be sued in any competent Court.

“(2) Such consent may be given with respect to a specified suit or to several specified suits, or with respect to all suits of any specified class or classes, and may specify, in the case of any suit or class of suits, the Court in which the Prince, Chief, ambassador or envoy may be sued; but it shall not be given unless the Prince, Chief, ambassador or envoy—

(a) has instituted a suit in the Court against the person desiring to sue him, or

(b) by himself or another, trades within the local limits of the jurisdiction of the Court, or

(c) is in possession of immoveable property situate within those limits and is to be sued in relation to his possession of that property.

“(3) No such Prince, Chief, ambassador or envoy shall be arrested under this Code, and, except with the consent of the Governor-General in Council certified as aforesaid, no decree shall be executed against the property of any such Prince, Chief, ambassador or envoy.”

24. Section 434 shall be— [Act X, 1886, s. 24 (2).]

25. After section 433 the following section shall be inserted, namely :—

“434. A Sovereign Prince or ruling Chief may sue, and shall be sued, in the name of his State: [Cf. I. L. R. 2 All. 690: 7 Bom. H. C. Rep. O. C. J. 150.]

“Provided that in giving the consent referred to in the last foregoing section the Governor-General in Council may direct that any such Prince or Chief shall be sued in the name of an agent or in any other name.”

26. (1) After the first paragraph of section 443 the following shall be inserted, namely :— [Cf. paragraph 4 of the Statement of Objects and Reasons of the Guardians and Wards Bill, 1886.]

“Where an authority competent in this behalf has appointed or declared a guardian or guardians of the person or property, or both, of the minor, the Court shall appoint him or one of them, as the case may be, to be the guardian for the suit under this section unless it considers, for reasons to be recorded by it, that some other person ought to be so appointed.”

(2) After section 446 the following shall be added, namely :—

"If the next friend is not a guardian appointed or declared by an authority competent in this behalf, and the application under this section is made by a guardian so appointed or declared who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor."

(3) For section 461 the following shall be substituted, namely :—

"461. (1) A next friend or guardian for the suit shall not receive any money or other moveable property under a decree or order in favour of a minor without the leave of the Court.

"(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is not thereby entitled to receive the money or other moveable property under the decree or order, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application."

(4) For section 464 the following shall be substituted, namely :—

"464. Nothing in this Chapter shall be construed to affect, or in any way derogate from, the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind."

[2 Swanst. 518, and I. L. R. 8 Cal. 32, and 7 All. 178.]

27. In section 539, for the words "having a direct interest" the words "having an interest" shall be substituted.

[I. L. R. 8 Cal. 272, & Bom. 644, & 4 All. 387.]

28. To section 540 the following shall be added, namely :—

"An appeal may lie under this section from an original decree passed *ex parte*."

[Cf. Act X. 1877, s. 561, & I. L. R. 8 Bom. 559 & 4 All. 248.]

29. (1) For the proviso to the first paragraph of section 561 the following shall be substituted, namely :—

"provided he has, not less than seven days before the hearing, filed the objection in the Appellate Court and left with the chief ministerial officer of the Court a notice of the filing thereof for service on the appellant or his pleader."

[I. L. R. 4 All. 430.]

(2) To the same section the following shall be added, namely :—

XV of 1877.

"The provisions of section 5 of the Indian Limitation Act, 1877, applicable to an appeal shall apply to the objection and notice under this section."

30. In section 568, clause (b), for the word "for" where that word first occurs, the word "or" shall be substituted.

[I. L. R. 2 Mad. 75.]

31. To section 584 the following shall be added, namely :—

"An appeal may lie under this section from an appellate decree passed *ex parte*."

32. In section 588, clause (9), for the word "or" the word "for" shall be substituted.

33. Section 599, and in section 601 the words "within thirty days from the date of the order", are hereby repealed.

34. To section 626 the following proviso shall be added, namely :—

"and

"(c) an application made under section 624 to the Judge who delivered the judgment may, if that Judge has ordered notice to issue under proviso (a) to this section, be disposed of by his successor."

35. (1) For the third paragraph of section 648 Amendment of, and addition to, section 648. the following shall be substituted :—

"and the Court making an arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he shows cause to the satisfaction of the former Court why he should not be sent to the latter Court, or unless he furnishes sufficient security for his appearance before the latter Court or (where the case is one under Chapter XXXIV) for satisfying any decree that may be passed against him by that Court, in either of which cases the Court making the arrest shall release him."

(2) To section 648 the following shall be added, namely :—

"Where a person to be arrested or property to be attached under this section resides or is situated within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal or at Madras or Bombay, or of the Recorder of Rangoon, the copy of the warrant of arrest or of the order of attachment, and the probable amount of the costs of the arrest or attachment, shall be sent to the Court of Small Causes of Calcutta, Madras, Bombay or Rangoon, as the case may be, and that Court, on receipt of the copy and amount, shall proceed as if it were the District Court."

36. To section 652 the following shall be added, namely :—

"A High Court not established under the Statute 24 and 25 Victoria, chapter 104 (*an Act for establishing High Courts of Judicature in India*) may from time to time, with the previous sanction of the Local Government, make, with respect to any matter other than procedure, any rule which any High Court so established might under section 15 of that Statute make with respect to any such matter for any part of the territories under its jurisdiction which is not included within the limits of a presidency-town. Rules so made shall be published in the same manner, and shall thereupon have the same force, as rules made and published under this section for the regulation of matters connected with procedure."

37. (1) Nos. 171, 171A and 171B of the second schedule to the Indian Limitation Act, 1877, are hereby repealed.

(2) In No. 171C of that schedule, for the words "of the same Code" the words and figures "or section 582 of the Code of Civil Procedure" shall be substituted.

[Gazette India, 19th August, 1886, Part I, page 355.]

[I. L. R. Cal. 80 and All. 278.]

[Cf. P. C. Cause 6 Bill, 1886.]

[No.]

[Cf. I. L. R. 7 All. Panjab. cord. XXI. Civil. ment. XIV.]

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to correct certain minor defects in the Code of Civil Procedure which have been brought to the notice of the Government of India during the four years which have elapsed since the Code was passed, and to amend that portion of the Indian Limitation Act, 1877, which relates to Chapter XXI of the Code.

The several amendments which it is proposed to make in the Code are noticed in the following remarks in the order in which they occur in the Bill:—

Section 3.—The second paragraph of section 8 of the Code, which, as the second paragraph of section 8 of Act X of 1877, was repealed by the Presidency Small Cause Courts Act, XV of 1882, was unintentionally reproduced in Act XIV of 1882. Its place has been taken by section 23 and the second schedule of the Presidency Small Cause Courts Act.

Section 4.—The Explanation which it is proposed to add to section 17 of the Code is suggested by the cases reported at I. L. R. 4 All. 423 and 5 All. 277.

Section 5.—The addition proposed by this section to be made to section 27 of the Code has been suggested by Mr. Justice Plowden of the Punjab Chief Court with reference to the remark of Pontifex J. at I. L. R. 6 Cal. 376.

Section 6.—In proposing to amend section 53 of the Code in the manner set forth in this section, the Government of India has followed the almost unanimous advice of the authorities whom it consulted in its letter Nos. 22-27, dated the 5th January, 1886.

Section 7.—In April, 1882, the Governor-General in Council published a resolution directing that postage-charges on all processes, notices and such other documents as are issued from any Court, and are required to be transmitted by post, should in future be paid by means of service postage-stamps without any additional charge being levied from the parties at whose instance the documents are issued. This resolution practically superseded the section of the Code which it is now proposed to repeal.

Section 8.—The addition to section 137 of the Code has been suggested by Bábú Brajendra Coomar Seal, the District Judge of Bankoora, on the ground of the difficulty which occurs in obtaining affidavits where the applicant under the section is a *pardánashin* lady.

Section 9.—The object of the amendments proposed to be made in section 141 of the Code is to remove the inconvenience caused to both public officers and private persons by the detention of their records in Civil Courts. The detention of the records of a village-accountant may bring his work to a standstill, and the Hon'ble Mr. Gibbon stated to the Select Committee on the Bengal Tenancy Bill that the inconvenience is quite as great in the case of private as of public records.

Section 10.—The addition to section 216 removes the doubt expressed in the case reported at I. L. R. 7 All. 284.

Section 11.—The circumstances which have suggested clause (a) of the proposed proviso to section 245 of the Code have been described in the Statement of Objects and Reasons of the Debtors Bill. If the clause becomes part of the Code, the Courts will be competent to require the property of a judgment-debtor to be proceeded against before proceedings are taken against his person.

Section 12.—As clause (h) of section 266 is at present drawn, half the salary of a public officer or railway servant in receipt of a monthly salary of twenty-one rupees may be attached. This was not the intention of the legislature.

The primary object of the additional clause (m) which it is proposed to insert in the section is to empower the Council of the Governor of Bombay to proceed with a Bill to declare and amend the law relating to *toda girás* allowances.

Section 13.—This section has been introduced at the suggestion of the Advocate General of Bombay, its object being to abolish, as regards the seizure of moveable property, the privilege conferred on debtors by the fourth resolution in Semayne's case (Smith's Leading Cases, Vol. I). At present that privilege operates mainly to enable debtors to avoid or delay payment of their just debts.

Section 14.—The necessity for the first of the proposed additions to section 320 of the Code is shown by the Full Bench judgment of the High Court for the North-Western Provinces at I. L. R. 5 All. 314. As regards the second addition, it appears to the Government of India that, if the Collector is to act effectively under section 320 and the following sections of the Code, he ought to be subject to the control of the Civil Court only to the extent expressly provided by the Code, being as to the rest subject only to the control of the higher revenue-authorities.

Section 15.—The addition to section 341 has been proposed by the High Court and Government of Madras with reference to cases which have recently occurred in Southern India. In one of these cases the debtor committed to prison was suffering from leprosy in an advanced

form, and in the other the prisoner was suffering from illness so serious as in the opinion of the medical officer to render it necessary that he should be immediately released from confinement.

Section 16.—The object of sub-sections (1) to (7) is to assimilate practice under Chapter XX of the Code to that to be prescribed by the proposed Indian Bankruptcy Act.

Sub-section (8) is designed to extend the jurisdiction of subordinate Courts in matters of insolvency. Most cases under Chapter XX are of little importance and may properly be disposed of by munsifs. Where any considerable sum is involved, the District Judge, who will have concurrent jurisdiction, can transfer the case to his own Court.

Sections 17 and 37.—The amendments proposed to be made in Chapter XXI of the Code and in the second schedule to the Indian Limitation Act, 1877, have their origin in the complaints of the hardship caused by the rules of limitation required by that Chapter and schedule to be observed in the substitution of legal representatives in the place of deceased parties to suits and appeals. With respect to these portions of the Code and Limitation Act, Mr. Rattigan, the Government Advocate of the Panjab, by whom the form of the amendments has been suggested, has recorded the following remarks :—

“Considerable hardship has been experienced in the Panjab in the working of those sections of the Civil Procedure Code which deal with the procedure to be followed in the case of the death of a plaintiff or defendant. It is of course perfectly correct and desirable that in the case of the death of one of the litigant parties, where the right to sue or be sued still survives, his legal representatives should be brought on the record, for it is clear that without such a process the suit could not validly proceed. But the hardship consists in requiring the legal representatives to apply for the above purpose within a comparatively short period after the death of the deceased plaintiff or defendant. In the Panjab it frequently happens in land-suits that fifty or a hundred persons are obliged, owing to community of interests, to sue or be sued in the one suit. Now, when such a suit comes up eventually to the Chief Court, a date for hearing is fixed which is generally not less than a year, and, at present, owing to the state of the work in the Court, is not unfrequently eighteen months from the date of filing the appeal. Within this period it often happens that one or more of the litigants is or are carried off by death from disease or violence; the representatives of the deceased, or the appellants, being ignorant agriculturists and not knowing the requirements of the law, take no action to put the representatives on the record, and thus, when the appeal finally comes on for hearing, a pleader on the opposite side takes the objection that no application has been made within the prescribed period, and, this being ascertained to be the fact, the appeal abates, and the unfortunate appellants find themselves deprived of all remedy simply in consequence of a harsh limitation law of which they had no knowledge. It is true that sections 368 and 371 allow the Court to extend the period if the plaintiff (or appellant-plaintiff) adduces sufficient cause for not making the required application within the prescribed period. But in nine cases out of ten of the kind I refer to the only cause assignable is ignorance of the requirements of the law—and this of course cannot be deemed to be ‘sufficient’ within the meaning of the section. So that the law as it stands at present works considerable hardship, and the hardship is irremediable.

“The question therefore arises, whether it is really necessary to prescribe a hard-and-fast period of limitation within which alone an application to put the legal representatives of a deceased plaintiff or defendant on the record can be entertained.

“For my own part I cannot see that there is any such necessity. If I remember rightly, the rules framed under the English Judicature Acts do not prescribe a period for such applications, and I do not see why the Indian law should do so. It would surely be sufficient to require the legal representatives of a deceased plaintiff or defendant, where the right to sue or be sued survived, to be put on the record; and to leave it to the Court to direct this to be done within such time, and upon such terms as to costs or otherwise, as it thinks fit.”

Sub-section (6) of section 15 of the Bill is intended to cure the defect noticed at I. L. R. 9 Bom. 56.

Section 18.—This section, which would restore the rule of the Code of 1859, has been proposed by Mr. Justice Straight.

Section 19.—The amendment made in section 386 of the Code by Act XII of 1879, whereby commissions to examine witnesses are required to be issued to a Court or a pleader of a High Court, has caused much inconvenience. In remote parts of the country High Court pleaders do not exist, and in few parts have Judges leisure to close their Courts and travel considerable distances for the purpose of taking the evidence of persons who cannot appear before them. Moreover, in some Provinces the Government maintains a staff of officials among whose duties is the execution of these commissions.

Section 20.—The addition which it is proposed to make to section 396 has been suggested by a gentleman of long standing at the Bombay bar. It is based on the Partition Act, 1868 (31 & 32 Vic., c. 40).

Section 21.—A Government Pleader does not exist in every Court.

Section 22.—It has been doubted whether the Government is empowered by section 432 to appoint a person generally to prosecute and defend all suits which it may from time to time be necessary to prosecute or defend on behalf of a Prince or Chief. It is obviously inconvenient that the Government should be compelled to make a special appointment in the case of each particular suit.

Sections 23 and 25.—The object of these sections is (a) to define more precisely, with reference to the definition of “Government” in section 2 of the Code, by whom consent to the institution of a suit against a Sovereign Prince, ruling Chief, ambassador or envoy may be given; (b) to make the provisions of section 433 more elastic as regards the mode of giving the consent, the

cases in which the consent may be given, and the Courts to which the consent may apply; and (c) to prescribe the name in which a Prince or Chief may sue and is to be sued. To effect this last object it is proposed that a Prince or Chief may sue and shall ordinarily be sued in the name of his State.

Section 24.—Section 434 of the Code, under which execution may be had of a decree in a suit between British subjects, is out of place in a chapter relating to Suits by Aliens and by or against Foreign and Native Rulers. The section may conveniently take the place of section 651, which was repealed in March last by Act X of 1886.

Section 26.—The amendments proposed by this section to be made in Chapter XXXI of the Code are those referred to in paragraph 4 of the Statement of Objects and Reasons of the Guardians and Wards Bill. The additions to sections 443 and 445 confer on a guardian who has been appointed, or whose title has been declared, by a Civil Court, Court of Wards or other competent authority, a preferential right to be appointed next friend or guardian for the suit. The amendment of section 461 gives effect to a suggestion by Sir Charles Turner, late Chief Justice of Madras, that, when a Court makes over property to a next friend or guardian for the suit who is not a duly constituted guardian of the property of the minor, it should be required to give such directions as, having regard to the nature of the property, may sufficiently protect it from waste and secure its proper application. Section 464, as amended, saves all local laws relating to suits by or against minors or by or against lunatics or other persons of unsound mind.

Section 27.—There are two reported cases, I. L. R. 8 Cal. 32, and I. L. R. 7 All. 178, with respect to the meaning to be assigned to the words "direct interest" in section 539. It appears that the authority for the insertion of the words "having a direct interest in the trust" is *In the matter of the Masters, Governors and Trustees of the Bedford Charity* (2 Swanst. 470). There certain Jews, some being residents of Bedford and others being members of Dutch and German Synagogues in London, sought to establish the title of Jews to the benefit of the Bedford Charity. It was contended that under Sir Samuel Romilly's Act (52 Geo. III, c. 101), on which section 539 of the Code of Civil Procedure is based, *any two or more persons* might be petitioners, and therefore the Jews of the London Synagogues, who, though *not interested*, considered it their duty to support the claims of those of their own persuasion, might be petitioners. With respect to that contention, Lord Eldon, admitting that every person possessing the character of an inhabitant of Bedford and describing himself as an object of the charity was entitled to apply to the Court, asked how he could notice the members of the London Synagogues. "Under Sir Samuel Romilly's Act," he observed, * * * "no person can petition who has not a *direct interest* in the charity. The Act indeed, authorises 'any two or more persons' to present a petition, but I conceive that those words must be understood to mean persons having an *interest*. * * * Those who are *interested* in the fund, provided Sir Samuel Romilly's Act, or the Bedford Charity Act, apply to this case, namely, persons residing in Bedford, are entitled to the summary interference of the Court, but I know not on what ground these gentlemen residing in London can appear as petitioners."

The contention which Lord Eldon overruled was that any one, though he had no interest whatever, might petition. He did, no doubt, remark that "no person can petition who has not a direct interest," but he immediately qualified that remark by adding that the words of the Act "must be understood to mean persons having an interest." The case cannot, therefore, it seems, be taken as an authority for the proposition that the interest of the petitioner must be direct. On the contrary, it may be inferred from the case that an indirect interest would have been deemed sufficient; for, when, in support of the contention that the words "any persons" comprehend persons who may not have an interest, the counsel for the petitioners pointed out that, in the instance of charities for relief of the blind and the poor, it had been the practice to receive the petition of the minister of the parish, Lord Eldon observed that "the petition of the minister of the parish is received, because the poor may be burdensome to him."

It may be doubted whether the case justified the insertion of the word "direct" in the Code, where it assumes a peculiar pointedness and must have some definite meaning assigned to it; and after consultation with the High Courts it has been decided to propose the removal of the word.

Sections 28 and 31.—It is proposed, in accordance with the advice of the great majority of the authorities consulted by the Government of India in its letter of the 5th January last, to declare *ex parte* decrees to be appealable.

Section 29.—Section 561 has been so amended as to require the objection to be filed in the Appellate Court, and notice of the filing thereof to be given to the appellant, and to admit of the objection being filed and the notice given at any time not less than seven days before the actual date of hearing; and, on the suggestion of Babú Brajendra Coomar Seal, it applies to the objection and notice under the provisions of section 5 of the Indian Limitation Act, 1877, applicable to an appeal.

Sections 30 and 32.—The amendments proposed to be made by these sections merely correct typographical errors in sections 568 and 588 of the Code.

Section 33.—Section 599, and the portion of section 601 which it is proposed to repeal, were repealed by Act XV of 1877 and were unintentionally reproduced in the Code of 1882.

Section 34.—This section removes a doubt which has been expressed in the cases noted on the margin of the section with respect to the construction to be placed on the word "made" in section 624.

Section 35.—Sub-section (1) of this section has been suggested by the following remarks of the Hon'ble Judges of the High Court at Fort William in their Registrar's reply to the letter of the Government of India of the 5th January last :—

"I am further to request attention to another point in this section (648) which, though not referred to in your letter, seems to the Judges to call for notice. The section gives absolute power to a Court to cause the arrest through another Court of a person summoned as a witness, and so to cause him to be sent under arrest to the Court issuing the process. The Court to which the warrant is sent has no power of hearing the person arrested or of dealing with any question except the giving of security by him. It seems to the Judges that this is a power far too great to be entrusted at any rate to the subordinate Courts in the Mufassal."

Sub-section (2) has been transferred to this Bill from the Provincial Small Cause Courts Bill, and will be of general application instead of being applicable to Courts of Small Causes only. With respect to the necessity for this addition to section 648, the District Judge of the 24-Parganas writes as follows :—

"Under section 648 I would also beg to point out that a warrant for the arrest of a person residing within the limits of the original jurisdiction must be executed through the High Court. This is very inconvenient to small suitors, and, in a case which occurred in my Court only a few weeks ago, a defendant preferred abandoning all attempts to get a recusant witness into Court to undergoing the trouble and expense of having a warrant of arrest served through the Original Side of the High Court. I would suggest that the procedure prescribed by section 86 should be made applicable to section 648, and that warrants of arrest which are to be served within the original jurisdiction should be executed by the Small Cause Court."

Section 36.—This section is designed to remove a doubt as to the extent of the powers of unchartered High Courts to make rules on matters not strictly connected with procedure.

The 1st September, 1886.

C. P. ILBERT.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.



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SIMLA, SATURDAY, SEPTEMBER 11, 1886.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 25th August, 1886:—

NO. 19 OF 1886.

Bill to annex the Town and Fort of Jhānsī and certain adjacent Territory to the Jhānsī District, and for certain other purposes.

Short title and commencement.

Act, 1886; and

(2) It shall come into force on a date to be appointed in this behalf by the Lieutenant-Governor of the North-Western Provinces, which date is in this Act referred to as the commencement of this Act.

PART I.

WHEREAS since the beginning of March, 1886, the fort and town of Jhānsī have been ceded to the British Government in full sovereignty by His Highness the Mahārājā Scindia in exchange for the cantonment of Morar which has been ceded to His Highness in full sovereignty by the British Government;

And whereas the town and fort of Jhānsī have been declared by the Governor-General in Council to be subject to the Lieutenant-Governorship of the North-Western Provinces;

And whereas it is proposed that certain lands in the neighbourhood of the town and fort of Jhānsī should be ceded to the British Government in full sovereignty by His Highness in exchange for certain other lands in that neighbourhood to be ceded to His Highness in full sovereignty by the British Government;

And whereas it is expedient that the town and fort of Jhānsī, and the lands to be ceded to the British Government, should be annexed to the Jhānsī district, and that the law in force therein should be the same as the law in force in that district;

And whereas it is also expedient that the town and fort, and the lands in the neighbourhood thereof which may be ceded to the British Government, should, for the purposes of the Scheduled Districts Act, 1874, form part of the Jhānsī district; XIV of 1874.

It is hereby enacted as follows:—

2. The town and fort of Jhānsī, and the lands Annexation of ceded in the neighbourhood thereof to Jhānsī district. of which may be ceded to the British Government in accordance with the proposal referred to in the preamble to this Part, shall, in the case of the town and fort, from the commencement of this Act, and, in the case of any of the lands, from the date of the cession thereof, be deemed to be part of the Jhānsī district.

3. All enactments which at the commencement of this Act, or at the date of the cession of any of the lands referred to in the last foregoing section, are or shall be in force in the Jhānsī district and not in the town and fort of Jhānsī or those lands, shall then come into force in the town and fort or those lands, as the case may be.

4. On and from the commencement of this Act, or the date of the cession of any of those lands, as the case may be, the town and fort of Jhānsī and the lands shall be deemed to form part of the district of Jhānsī mentioned in Part IV of the first schedule to the Scheduled Districts Act, 1874.

5. All acts of executive authority, proceedings, decrees and sentences which have been done, taken or passed in or with respect to Validation of acts done since the beginning of March, 1886. [cf. Act XX of 1876, s. 3.]

the town and fort of Jhānsī since the beginning of March, 1886, and before the commencement of this Act, by any officer of the Government, or by any person acting under his authority or otherwise in pursuance of an order of the Government, or which have been or shall be ratified by the Lieutenant-Governor of the North-Western Provinces, shall be as valid and operative as if they had been done, taken or passed in accordance with law; and no suit or other proceeding shall be maintained or continued against any person whatever on the ground that any such acts, proceedings, decrees or sentences were not done, taken or passed in accordance with law.

PART II.

And whereas it is expedient that decrees and orders passed by the Civil and Revenue Courts of His Highness in cases which would have been cognizable by the Civil and Revenue Courts of the Jhānsī district under the Code of Civil Procedure or the Jhānsī Courts Act, 1867, or the North-Western Provinces Rent Act, 1881, if the territory ceded by His Highness had been part of the Jhānsī district at the time of the institution of the cases, should be capable of being executed as if they had been made by the Courts of the Jhānsī district; It is hereby further enacted as follows:—

6. (1) An application for the execution of a decree or order passed by a Civil or Revenue Court of His Highness in any such case as is referred to in the preamble to this Part may, with the previous sanction of the Deputy Commissioner, be made to any Court in the Jhānsī district subordinate to the Court of the Commissioner which may be specified by the Deputy Commissioner in that behalf in his order giving the sanction.

(2) The Deputy Commissioner may for any sufficient cause withhold his sanction to the making of the application, or permit the application to be made on any conditions which in the circumstances he deems it proper to impose.

(3) The fact that an application is barred by the Indian Limitation Act, 1877, may be a sufficient cause for withholding sanction to the making of the application, but in any case in which the holder of the decree or order has been debarred from enforcing it by reason of the cession of the town and fort of Jhānsī to the British Government, and to which the Deputy Commissioner sees fit to apply the provisions of that Act, the Deputy Commissioner shall, in computing the period of limitation, exclude therefrom the

time which has elapsed between the cession of the town and fort and the commencement of this Act.

(4) Subject to revision by the Commissioner of the Jhānsī Division, an order of the Deputy Commissioner sanctioning or refusing to sanction the making of an application under this section, or imposing conditions with respect thereto, shall be final.

PART III.

And whereas it is expedient that traders and others who were entitled immediately before the cession of the cantonment of Morar to institute certain suits in, or make applications for or with respect to the execution of certain decrees to, a Civil Court at Morar should be enabled to institute those suits in, and make those applications to, the Civil Courts at Jhānsī and Agra, and at any other place from time to time appointed in this behalf by the Governor-General in Council, and that the period of limitation in these cases should be extended; It is hereby further enacted as follows:—

7. (1) Any person who at the date of the cession of the cantonment of Morar was entitled to institute in a Civil Court at Morar a suit of any of the descriptions referred to in articles 50 to 54

(both inclusive) or articles 56 to 64 (both inclusive) or articles 74 and 75 of the second schedule to the Indian Limitation Act, 1877, or to make to any such Court an application for or with respect to the execution of a decree in any such suit, may institute the suit or make the application in any Civil Court at Jhānsī or Agra, or other place appointed in that behalf by the Governor-General in Council, which would have jurisdiction in the suit to be instituted, or, as the case may be, would have had jurisdiction in the suit in which the decree to be executed was passed, if the cause of action had arisen within the local limits of its jurisdiction.

(2) Notwithstanding anything in any enactment or notification to the contrary, any Civil Court at Jhānsī or Agra, or other place aforesaid, in which any such suit or application as is referred to in sub-section (1) is instituted or made, shall, subject to the provisions of that sub-section, have jurisdiction to dispose of it.

(3) In computing the period of limitation for any suit or application referred to in this section, the time which has elapsed between the date of the cession of the cantonment of Morar and the commencement of this Act shall be excluded.

STATEMENT OF OBJECTS AND REASONS.

1. This Bill is drawn in three Parts.

2. The object of Part I is to incorporate in the Jhānsī district the fort and town of Jhānsī, which were lately ceded by the Mahārājā Scindia to the British Government in exchange for the cantonment of Morar. The town and fort have already been declared by proclamation under the Statute 28 & 29 Vic., c. 17, section 4, to be subject to the Lieutenant-Governorship of the North-Western Provinces, but legislation is required for the annexation of the town and fort to the Jhānsī district, and for the assimilation of the law in force therein to that in force in the district. The provisions necessary to effect these objects are contained in sections 2 and 3 of the Bill, while section 4 makes it clear that the ceded territory will be part of the scheduled district of Jhānsī; and section 5, which is taken from the corresponding provision in the Upper Burma Laws Bill now before the Legislative Council, validates all acts done since the date of the cession and before the commencement of the Act. As negotiations are at present pending for the exchange of certain lands in the neighbourhood of Jhānsī, the provisions of sections 2, 3 and 4 of the Bill are made prospective, so as to cover the lands which may be ceded.

3. The object of Part II is to give effect to certain decrees and orders of the Gwalior Courts which, by reason of cession of territory, have ceased to be enforceable in those Courts.

4. The object of Part III is to afford relief to certain traders and others formerly carrying on business within the cantonment of Morar who had money-claims enforceable in the local Courts at the time of the cession of the cantonment to the Maharaja. As the British Courts in the cantonment have necessarily been abolished, these persons have now no means of recovering the amounts due to them at Morar, whilst to follow their debtors to the various places to which they have migrated, and proceed against them in the Civil Courts there, would, in many cases, put the creditors to greater expenses than the amount of the debts due to them. It is proposed, therefore, by section 7 of the Bill that persons who may have been entitled to file suits of certain classes, or applications for or with respect to the execution of decrees in suits of those classes, in a Morar Civil Court at the date of the cession of the cantonment, may file the suits and applications in the Civil Courts at Jhansi or Agra, or at any other place appointed by the Governor-General in Council in this behalf, and that the Courts having jurisdiction at those places shall dispose of the suits and applications. In order to save debts which might otherwise have become time-barred, the same section declares that in computing the period of limitation for the suits and applications, the time which has elapsed between the date of the cession of the cantonment and the commencement of the Act shall be excluded.

The 25th August, 1886.

C. P. ILBERT.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 25th August, 1886:—

NO. 20 OF 1886.

THE NATIVE PASSENGER SHIPS
BILL, 1886.

CONTENTS.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title.
2. Extent and application.
3. Commencement.
4. Repeal.
5. Definitions.

CHAPTER II.

RULES FOR ALL VOYAGES.

6. Ships to sail only from ports appointed by the Government.
7. Master to give notice of day of sailing.
8. Power to enter and inspect ship.
9. Ship not to sail without two certificates.
10. Contents of certificate A.
11. Contents of certificate B.
12. Grant of certificates.
13. Substitute for certificate A.
14. Survey of ship.
15. Discretion as to grant of certificate.
16. Copy of certificates to be exhibited.
17. Supply by passengers of their own provisions.

CHAPTER III.

RULES FOR SHORT VOYAGES.

18. Space to be available for passengers.
19. Ship taking additional passengers at intermediate port.
20. Report of deaths on the voyage.

CHAPTER IV.

RULES FOR LONG VOYAGES.

SECTIONS.

21. Space to be available for passengers.
22. Statement of passengers.
23. Deaths on voyage.
24. Ships taking additional passengers and touching at intermediate port.
25. Bond where ship clears for port in Red Sea.
26. Ships sailing to or from port in Red Sea to touch at Aden.
27. Bill of health at Aden.
28. Certain ships to carry medical officer.
29. Certain ships to be propelled by steam.
30. Power for Local Government to direct medical inspection of passengers.

CHAPTER V.

PENALTIES.

31. Penalty for ship unlawfully departing or receiving passengers on board.
32. Penalty for opposing entry on or inspection of ships.
33. Penalty for not exhibiting copy of certificates.
34. Penalty for not complying with requirements as to statement of passengers and certain other matters.
35. Penalty for fraudulent alteration in ship after certificate obtained.
36. Penalty for failing to supply passengers with prescribed provisions.
37. Penalty for not obtaining bill of health at Aden.
38. Penalty for excess of number specified in certificate.
39. Penalty for bringing native passengers from foreign port in excess of authorized proportion.
40. Penalty for landing passenger at a place other than that at which he has contracted to land.
41. Penalty for making voyage in contravention of contract with passengers.
42. Penalty on master or medical officer of certain ships disobeying rules.
43. Penalty on master of certain ships sailing without medical officer.
44. Penalty on master and owner of certain ships not propelled by steam.
45. Penalty on master receiving passenger in contravention of section 30.

Procedure.

SECTIONS.

46. Adjudication of offences and levy of fine by distress on ship.
47. Jurisdiction.
48. By whom proceedings for penalties to be instituted.
49. Application of fines.
50. Depositions receivable when witnesses cannot be produced.

CHAPTER VI.

SUPPLEMENTAL PROVISIONS.

51. Information to be sent to ports of embarkation.
52. Report of Consul.
53. Power for Governor-General in Council and Local Government to make rules.
54. Procedure for making rules.
55. Appointment of officers.
56. Power to declare what shall be deemed "seasons of fair weather" and "long voyages."
57. Power to prescribe space to be available for passengers.
58. Power to exempt ship from provisions of Act.
59. Powers exerciseable from time to time.

SCHEDULE.—ENACTMENTS REPEALED.

A Bill to consolidate and amend the law relating to Native Passenger Ships.

WHEREAS it is expedient to consolidate and amend the law relating to native passenger ships; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. This Act may be called the Native Passenger Ships Act, 1886.

[Act VIII,
1876, s. 2.]

Extent and applica-
tion.

2. (1) It extends to the whole of British India, and applies—

- (a) to all subjects of Her Majesty within the dominions of Princes and States in India in alliance with Her Majesty;
 - (b) to all native Indian subjects of Her Majesty without and beyond British India; and,
 - (c) subject to the exceptions mentioned in sub-section (2), to vessels carrying more than thirty passengers being natives of Asia or Africa.
- (2) But it does not apply—
- (i) to any ship-of-war or transport belonging to, or in the service of, Her Majesty, or
 - (ii) to any ship-of-war belonging to any Foreign Prince or State, or
 - (iii) to any sailing-vessel not carrying as passengers more than thirty natives of Asia or Africa, or
 - (iv) to any steamer not carrying as passengers more than sixty such natives, or
 - (v) to any sailing-vessel or steamer not intended to convey passengers to or from any port in British India:

Provided, with respect to clauses (iii) and (iv) of this sub-section, that the Local Government may, with the previous sanction of the Governor-General in Council, declare all or any of the provisions of this Act to apply to sailing-vessels, or any class of sailing-vessels, carrying as passengers more than fifteen natives of Asia or Africa, and to steamers, or any class of steamers, carrying as passengers more than thirty such natives.

3. This Act shall come into force on such day [Act
Commencement. as the Governor-General 1876,
in Council, by notification
in the *Gazette of India* appoints.

4. (1) On and from that day the enactments [Act
Repeal. mentioned in the schedule 1876,
to this Act shall be repealed
to the extent specified in the third column thereof.

(2) But all ports, places and officers appointed, rules, declarations and exemptions made, bonds executed, directions given and certificates granted under any of those enactments shall, so far as may be, be deemed to be respectively appointed, made, executed, given and granted under this Act; and

(3) Any enactment or document referring to any enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof.

5. In this Act, unless there is something repug- [Act
Definitions. nant in the subject or con- 1876
text,—

(1) "Magistrate" means a person exercising powers not inferior to those of a Magistrate of the second class, and includes a Justice of the Peace and, at the Port of Aden, the Resident or an Assistant Resident:

(2) "ship" includes every description of vessel used in navigation not propelled by oars:

(3) "master" includes every person (other than a pilot) having command or charge of a ship:

(4) "passenger" means a person above the age of twelve years, or two persons between the ages of one year and twelve years; but it does not include either a person in attendance on another person who is not a native of Asia or Africa, or a child under one year of age:

(5) "voyage" means the whole distance between the ship's port of departure and her final port of arrival:

(6) "long voyage" means any voyage during which the ship performing it will in ordinary circumstances be one hundred and twenty hours or upwards continuously out of port:

(7) "short voyage" means any voyage during which the ship performing it will not in ordinary circumstances be one hundred and twenty hours continuously out of port:

Illustration.

A ship starts from port A, and is destined finally to arrive at port B, between which ports the ordinary distance is ten days: but she is to touch at four intermediate ports, no one of which is in ordinary circumstances more than five days from the next one. This is a short voyage.

(8) "Chief Officer of Customs" means the executive officer of highest rank in the Department of Customs in any port to which this Act applies.

The Native Passenger Ships Bill, 1886.
(Chapter II.—Rules for all Voyages.—Sections 6-15.)

CHAPTER II.

RULES FOR ALL VOYAGES.

Act VIII, 1876, s. 6.] **6. (1)** A ship carrying passengers shall not depart or proceed from, or discharge passengers at, any port or place within British India other than a port or place appointed in this behalf by the Local Government.

(2) After a ship has departed or proceeded upon a voyage from a port or place so appointed, a person shall not be received on board as a passenger except at some other port or place so appointed.

Act VIII, 1876, s. 7.] **7. (1)** The master, owner or agent of a ship so departing or proceeding shall give notice to an officer authorised in this behalf by the Local Government that the ship is to carry native passengers, and of her destination, and of the proposed time of sailing.

(2) The notice shall be given not less than twenty-four hours before that time.

Act VIII, 1876, s. 8.] **8.** After receiving the notice, the officer aforesaid, or a person authorized by him, shall be at liberty at all times to enter and inspect the ship and the fittings, provisions and stores therein.

Act VIII, 1876, s. 9.] **9. (1)** A ship intended to carry passengers shall not commence a voyage from a port or place appointed under this Act, unless the master holds two certificates to the effect mentioned in the two next following sections.

(2) The officer of the Government whose duty it is to grant a port-clearance for the ship shall not grant it unless the master holds those certificates.

Act VIII, 1876, s. 10.] **10.** The first of the certificates (hereinafter called "certificate A") shall state that the ship is seaworthy and properly equipped, fitted and ventilated, and the number of passengers which she is capable of carrying.

Act VIII, 1876, s. 11.] **11.** The second of the certificates (hereinafter called "certificate B") shall state—

- (a) the voyage which the ship is to make and the intermediate ports, if any, at which she is to touch;
- (b) that she has the proper complement of officers and seamen;
- (c) that provisions, fuel and pure water, over and above what is necessary for the crew, and the other things, if any, prescribed for the ship by the rules under this Act, have been placed on board, of the quality prescribed by the rules, properly packed, and sufficient to supply the passengers on board during the voyage which the ship is to make (including such detention in quarantine as may be probable), according to the scale for the time being prescribed by those rules;
- (d) that the master holds certificate A;
- (e) if the ship is to make a short voyage in a season of foul weather, and to carry

upper-deck passengers, that she is furnished with substantial bulwarks and a double awning or with other sufficient protection against the weather;

- (f) if she is to sail to any port in the Red Sea, [Act XVII, 1883, s. 2.] that she is propelled principally by steam and, if she is to carry more than one hundred passengers being natives of Asia or Africa, that she has on board a medical officer licensed in accordance with the rules under this Act; and
- (g) such other particulars, if any, as may be prescribed by those rules.

12. The person by whom certificate A and certificate B are to be granted shall be the officer referred to in section 7. [Act VIII, 1876, s. 12.]

13. Where the master of a ship produces to that officer either of the following certificates, namely— [Act VIII, 1876, s. 13.]

(a) a valid certificate granted by the Board of Trade or by a British Colonial Government, or

(b) a certificate granted under the authority of a British Indian Government on a date not more than one year before the proposed day of sailing and in force and applicable to the voyage on which the ship is to proceed or the service on which she is about to be employed, [Act VII, 1884, s. 41.]

the officer may, if the particulars required by section 10 are certified thereby, take the certificate as evidence of those particulars, and it shall then be deemed to be a certificate A for the purposes of this Act.

14. (1) After receiving the notice required by section 7, the officer aforesaid may, if he thinks fit, cause the ship to be surveyed at the expense of the master or owner by competent surveyors, who shall report to him whether the ship is, in their opinion, seaworthy and properly equipped, fitted and ventilated for the voyage which she is to make. [Act VIII, 1876, s. 14.]

Survey of ship. Provided that he shall not cause a ship holding a certificate mentioned in section 13, clause (a) or clause (b), to be surveyed unless, by reason of the ship having met with damage or having undergone alterations, or on other reasonable ground, he considers it likely that she may be found unseaworthy or not properly equipped, fitted or ventilated for the voyage.

(2) If the officer aforesaid causes a survey to be made of a ship holding any such certificate, and the surveyors report that the ship is seaworthy and properly equipped, fitted and ventilated for the voyage, and that there was no reasonable ground why the officer aforesaid should have thought it likely that she would be found unseaworthy, or not properly equipped, fitted or ventilated for the voyage, the expense of the survey shall be paid by the Local Government.

15. (1) The officer authorized to grant a certificate under this Act in respect of a ship shall not grant it unless he is satisfied that she has not on board any cargo likely from its quality, quantity or mode of stowage to prejudice the health or safety of the passengers. [Act VIII, 1876, s. 15.]

Discretion as to grant of certificate.

The Native Passenger Ships Bill, 1886.

(Chapter II.—Rules for all Voyages.—Sections 16-17.—Chapter III.—Rules for short Voyages.—Sections 18-20.—Chapter IV.—Rules for long Voyages.—Sections 21-23.)

(2) But save as aforesaid, and subject to the provisions of sub-section (3), it shall be in the discretion of the officer aforesaid to grant or withhold a certificate under this Act.

[Act VIII,
1876, s. 16.]

(3) In the exercise of that discretion that officer shall be subject to the control of the Local Government, and of any intermediate authority which that Government appoints in this behalf.

[Act VIII,
1876, s. 17.]

16. The master or owner shall post up in a conspicuous part of the ship, so as to be visible to persons on board thereof, a copy of each of the certificates granted under this Act in respect of the ship, and shall keep those copies so posted up in that part during the voyage.

[Act VIII,
1876, s. 18,
amended.]

17. If an officer appointed in this behalf by the Local Government is satisfied that a passenger has brought on board a ship for his own use provisions of the quality and in the quantity for the time being prescribed by the rules under this Act, the requirements of this Act respecting the supply of provisions for passengers shall not, except as to the supply of water, apply so far as regards the supply of provisions for that passenger.

CHAPTER III.

RULES FOR SHORT VOYAGES.

[Act VIII,
1876, s. 19.]

18. (1) For seasons of fair weather, a ship performing a short voyage shall contain in the between-decks at least six superficial feet and thirty-six cubic feet of space available for every between-decks passenger, and shall contain on the upper-deck at least four superficial feet available for each such passenger and six superficial feet available for each upper-deck passenger.

(2) For seasons of foul weather, a ship propelled by sails and performing a short voyage shall contain in the between-decks at least twelve superficial feet and seventy-two cubic feet of space available for every between-decks passenger, and shall contain on the upper-deck at least four superficial feet available for each such passenger and twelve superficial feet available for each upper-deck passenger.

(3) For seasons of foul weather, a ship propelled by steam, or partly by steam and partly by sails, and performing a short voyage, shall contain in the between-decks at least nine superficial feet and fifty-four cubic feet of space available for every between-decks passenger, and shall contain on the upper-deck at least four superficial feet available for each such passenger and nine superficial feet available for each upper-deck passenger.

(4) But in seasons of foul weather a ship shall not carry upper-deck passengers unless she is furnished with substantial bulwarks and a double awning or with other sufficient protection against the weather.

[Act VIII,
1876, s. 20.]

19. If a ship performing a short voyage takes additional passengers on board at an intermediate port or place, the master

shall obtain a supplementary certificate from the proper officer at that port, stating—

(a) the number of passengers so taken on board; and

(b) that provisions, fuel and pure water, over and above what is necessary for the crew, and the other things, if any, prescribed for the ship by the rules under this Act, have been placed on board, of the quality prescribed by the rules, properly packed, and sufficient to supply the passengers on board during the voyage which the ship is to make (including such detention in quarantine as may be probable), according to the scale for the time being prescribed by those rules:

Provided that, if the certificate B held by the master of the ship states that provisions, fuel and pure water, over and above what is necessary for the crew, and the other things, if any, prescribed for her by the rules under this Act, have been placed on board, of the quality prescribed by the rules, properly packed, and sufficient to supply the full number of passengers which she is capable of carrying, the master shall not be bound to obtain any such supplementary certificate.

20. When the ship reaches her final port of Report of deaths on arrival, the master shall notify, to such officer as the Governor-General in Council appoints in this behalf, the date and supposed cause of death of every passenger dying on the voyage. [Act V 1876, s. 2]

CHAPTER IV.

RULES FOR LONG VOYAGES.

21. (1) A ship propelled by sails and performing a long voyage shall contain in the between-decks at least twelve superficial feet and seventy-two cubic feet of space available for every passenger. [Act V 1876, s. 2]

(2) A ship propelled by steam, or partly by steam and partly by sails, and performing a long voyage, shall contain in the between-decks at least nine superficial feet and fifty-four cubic feet of space available for every passenger.

22. The master of a ship departing or proceeding on a long voyage from any port or place in British India shall sign two statements, specifying the number and the respective sexes of all the passengers and the number of the crew, and shall deliver them to the officer appointed under section 20, who shall thereupon, after having first satisfied himself that the numbers are correct, countersign and return to the master one of the statements. [Act VII 1876, s. 2]

23. The master shall note in writing on the statement returned to him, and on any additional statement to be made under the next following section, the date and supposed cause of death of any passenger who may die on the voyage, and shall forthwith on the arrival of the ship at her destination or at any port at which it may be intended to land passengers, and before any passengers are landed, produce the statement, with any additions thereto made, to any person lawfully exercising consular authority on behalf of Her Majesty at the port of [Act VII 1876, s. 2]

*The Native Passenger Ships Bill, 1886.**(Chapter IV.—Rules for long Voyages.—Sections 24-30.—Chapter V.—Penalties.—Sections 31-33)*

arrival if it is a foreign port, or to the Chief Officer of Customs, or the officer (if any) appointed under this Act to receive such statements, at any port or place at which it is intended to land the passengers or any of them.

VIII,
s. 25.]

Ship taking additional passengers and touching at intermediate port.

24. (1) In either of the following cases, namely,—

(a) if, after the ship has departed or proceeded on a long voyage, any additional passengers are taken on board at a port or place within British India appointed under this Act for the embarkation of passengers, or

(b) if the ship upon her voyage touches or arrives at any such port, having previously received on board additional passengers at any place beyond British India,

the master shall obtain a fresh certificate to the effect of certificate B from the proper officer at that port, and shall make additional statements specifying the number and the respective sexes of all the additional passengers.

(2) All the foregoing provisions of this Act in that behalf shall be applicable to any certificate granted or statement made under this section.

VIII,
s. 3.]

25. In the case of a ship sailing from any port in British India to any port in the Red Sea, the officer whose duty it is to grant a port-clearance for any such ship shall not grant the clearance unless and until the master, owner or agent of the ship and two sureties resident in British India have executed in favour of the Secretary of State for India in Council a joint and several bond, for the sum of Rs. 5,000, conditioned—

(a) that the ship shall touch at Aden on the outward voyage and there obtain a clean bill of health, and shall do the same on the homeward voyage if the ship continues to carry more than sixty passengers; and

(b) that the master and medical officer (if any) of the ship shall comply with on the outward voyage, and also on the homeward voyage if the ship continues to carry more than sixty passengers, the provisions of this Act and of such rules relating to ships sailing between ports in British India and ports in the Red Sea as the Governor-General in Council may make under this Act.

VIII,
s. 27,
XVII,
s. 4.]

26. A ship carrying more than sixty passengers from port in Red Sea to Africa, and sailing from any port in British India to any port in the Red Sea, or from any port in the Red Sea to any port in British India, shall touch at Aden, and shall not leave that port without having obtained from the proper authority a clean bill of health.

VIII,
s. 28, &
XVIII,
s. 5.]

27. The authority at Aden empowered to grant the bill of health shall refuse to grant it if the ship has on board a greater number of passengers than in the proportion prescribed for her by this Act, and may refuse to grant it if the requirements of any rule under this Act are not complied with on board the ship.

28. A ship sailing from or to any port in British India to or from any port in the Red Sea and carrying more than one hundred passengers being natives of Asia or Africa shall have on board a medical officer licensed in accordance with the rules under this Act. [Act XVII, 1883, s. 6.]

29. A ship sailing from or to any port in British India to or from any port in the Red Sea shall be propelled principally by steam. [Act XVII, 1883, s. 6.]

30. (1) The Local Government may direct that no passenger shall be received on board any ship or any ship of a specified class sailing from any port in British India to any port in the Red Sea unless and until the passenger has been inspected, at such time and place as the Local Government may fix in this behalf, by a medical officer to be appointed by that Government for the purpose. [Act XVII, 1883, s. 6.]

(2) If, in the opinion of the officer making an inspection under this section, a passenger is suffering from any dangerously infectious or contagious disease, the passenger shall not be permitted to embark.

CHAPTER V.

PENALTIES.

31. If a ship departs or proceeds upon a voyage from, or discharges passengers at, any port or place within British India in contravention of the provisions of section 6, sub-section (1), or section 9, or if a person is received as a passenger on board a ship in contravention of the provisions of section 6, sub-section (2), the master or owner shall, for every passenger conveyed in the ship, or for every passenger so discharged or received on board, be punished with fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to one month, or with both, and the ship, if found within two years in any port within British India, may be seized and detained by any Chief Officer of Customs until the penalties incurred under this Act by her master or owner have been adjudicated, and the payment of the fines imposed on him under this Act, with all costs, has been enforced, under the provisions of this Act: [Act VIII, 1876, s. 29.]

Provided that the aggregate term of imprisonment awarded under this section shall not exceed one year. [New.]

32. If a person impedes or refuses to allow the entry or inspection authorized under this Act, he shall be punished with fine which may extend to five hundred rupees for each offence, or with imprisonment for a term which may extend to three months, or with both. [Act VIII, 1876, s. 30.]

33. If a master or owner wilfully fails to comply with the requirements of section 16 with respect to the posting of copies of certificates, he shall be punished with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to one month, or with both. [Act VIII, 1876, s. 31.]

The Native Passenger Ships Bill, 1886.
(Chapter V.—Penalties.—Sections 34-44.)

[Act VIII, 1876, s. 32.] **34.** If a master fails to comply with any of the requirements of section 22 or section 23, as to the statement of passengers, or wilfully makes any false entry or note in or on any such statement, or wilfully fails to obtain any such supplementary certificate as is mentioned in section 19, or to report deaths as required by section 20, or to obtain any such fresh certificate, or to make any such statement of the number of additional passengers, as is mentioned in section 24, he shall be punished with fine which may extend to five hundred rupees for every such offence, or with imprisonment for a term which may extend to three months, or with both.

[Act VIII, 1876, s. 33.] **35.** If a master, after having obtained any of the certificates mentioned in section 9, section 19 or section 24, fraudulently does or suffers to be done anything whereby the certificate becomes inapplicable to the altered state of the ship, her passengers, or other matters to which the certificate relates, he shall be punished with fine which may extend to two thousand rupees, or with imprisonment for a term which may extend to six months, or with both.

[Act VIII, 1876, s. 34.] **36.** If a master wilfully, and without satisfactory excuse, omits to supply to any passenger the allowance of food, fuel and water prescribed by the rules under this Act, he shall be punished with fine which may extend to twenty rupees for every passenger who has sustained detriment by the omission.

[Act VIII, 1876, s. 35.] **37.** If the master of a ship to which section 26 applies wilfully fails to touch at Aden, or leaves that port without having obtained a bill of health under that section, he shall, for every such offence, be punished with fine which may extend to two thousand rupees, or with imprisonment for a term which may extend to six months, or with both.

[Act VIII, 1876, s. 36.] **38.** (1) If a ship has on board a number of passengers which, regard being had to the time of the year and other circumstances, is greater than the number allowed by the certificate, or, on arriving from a port where a certificate could not be procured, has on board a number of passengers exceeding the number allowed by this Act for the ship, the master and owner shall, for every passenger over and above the number allowed by the certificate or by this Act, as the case may be, be each punished with fine which may extend to twenty rupees, and the master shall further be liable for each of the passengers over and above that number to imprisonment for a term which may extend to one week:

Provided that the aggregate term of imprisonment awarded under this section shall not exceed six months.

(2) Any officer authorized in this behalf by the Local Government may cause all passengers over and above the number allowed by the certificate or by this Act, as the case may be, to disembark, and may forward them to any port of British India, and may recover the cost of so forwarding them from

the master or owner of the ship as if the cost was a fine imposed under this Act, and a certificate under the hand of that officer shall be conclusive proof of the amount of the cost aforesaid.

39. If a ship bringing native passengers from any port or place beyond British India, into any port or place in British India, has on board a number of passengers greater either than in the proportion prescribed by section 18 or section 21 or under section 57 (as the case may be) or than the number allowed by the license or certificate, if any, granted in respect of the ship at her port or place of departure, the master and owner shall, for every passenger in excess of that proportion or of that number, be each punished with fine which may extend to twenty rupees. [Act VII, 1876, s. 3]

40. If the master of a ship to which this Act applies lands any passenger at any port or place other than that at which he has contracted to land, which the passenger may have contracted to land, unless with his previous consent, or unless the landing is made necessary by perils of the sea or other unavoidable accident, the master shall, for every such offence, be punished with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to a month, or with both. [Act VII, 1876, s. 3]

41. If a ship, otherwise than by reason of perils of the sea or other unavoidable accident, touches at any port or place in contravention of any express or implied contract or engagement with the passengers, or assurance to them, with respect to the voyage which the ship was to make and the time which that voyage was to occupy, whether the contract, engagement or assurance was made by public advertisement or otherwise, the master and owner shall each be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to three months, or with both. [New.]

42. If the master or medical officer of any such ship as is referred to in section 26 wilfully breaks, or omits or neglects to obey, any rule under this Act applicable to the ship, he shall be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to three months, or with both. [Act XI, 1883, s. 3]

43. If a ship sailing from or to any port in British India to or from any port in the Red Sea and carrying more than one hundred passengers has not on board a medical officer as required by section 28, the master of the ship shall be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to three months, or with both. [Act XI, 1883, s. 3]

44. If a ship sailing from or to any port in British India to or from any port in the Red Sea is not principally propelled by steam, the master and owner shall each be punished with fine which may extend to five hundred rupees, or with imprisonment which may extend to three months, or with both. [Act XI, 1883, s. 3]

The Native Passenger Ships Bill, 1886.
(Chapter V.—Penalties.—Sections 45—50.—Chapter VI.—Supplemental Provisions.—Sections 51-53.)

Act XVII, 1883, s. 7.] 45. If the master of a ship to which a direction under section 30 applies knowingly receives on board the ship any person in contravention of that section, he shall be punished with fine which may extend to five hundred rupees for each person so received, or with imprisonment which may extend to three months, or with both.

Procedure.

Act VIII, 1876, s. 39.] Adjudication of offences, and levy of fine by distress on ship.

46. (1) Offences against this Act shall be punishable by a Magistrate.

(2) If the person on whom a fine is imposed under this Act is the master or owner of a ship and the fine is not paid at the time and in the manner prescribed by the order of payment, the Magistrate may, in addition to the ordinary means prescribed by law for enforcing payment, direct by warrant the amount remaining unpaid to be levied by distress and sale of the ship, her tackle, furniture and apparel.

Act VIII, 1876, s. 40.] 47. For the purpose of the adjudication of penalties under this Act, every offence against its provisions shall be deemed to have been committed within the limits of the jurisdiction of the Magistrate of the place where the offender is found.

Act VIII, 1876, s. 41.] 48. The penalties to which masters and owners of ships are made liable by this Act shall be enforced only on information laid at the instance of the officers appointed to grant certificates under this Act, or, at any port or place where there is no such officer, at the instance of the Chief Officer of Customs.

Act VIII, 1876, s. 42.] 49. A Magistrate imposing a fine under this Act may, if he thinks fit, direct the whole or any part thereof to be applied in compensating any person for any detriment which he may have sustained by the act or default in respect of which the fine is imposed or in or towards payment of the expenses of the proceedings.

Act VIII, 1876, s. 43.] 50. (1) Whenever, in the course of any legal proceeding under this Act, the testimony of a witness is required in relation to the subject-matter of the proceeding, any deposition that he may have previously made in relation to the same subject-matter before any Justice or Magistrate in Her Majesty's dominions (including all parts of India other than those subject to the same Local Government as the port or place where the proceeding is instituted), or before any British consular officer elsewhere, shall be admissible in evidence on proof that the witness cannot be found within the jurisdiction of the Court in which the proceeding is instituted:

Provided that the deposition shall not be admissible unless—

- (a) it is authenticated by the signature of the Justice, Magistrate or consular officer;
- (b) it was made in the presence of the person accused; and
- (c) the fact that it was so made is certified by the Justice, Magistrate or consular officer.

(2) It shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition; and in any criminal proceeding, such certificate as aforesaid shall, unless the contrary is proved, be sufficient evidence of the accused having been present in manner thereby certified.

CHAPTER VI.

SUPPLEMENTAL PROVISIONS.

51. (1) The Chief Officer of Customs, or the [Act VIII, 1876, s. 44.] Information to be sent officer, if any, appointed under this Act, at any port or place within British India at which any ship to which this Act applies touches or arrives, shall, with advertence to the provisions of this Act, send any particulars which he may deem important respecting the ship and the passengers conveyed therein to the officer at the port from which the ship commenced her voyage, and to the officer at any other port within British India where the passengers or any of them embarked.

(2) Any officer appointed under this Act may, at any port or place in British India at which a ship to which this Act applies touches, board the ship and inspect her in order to ascertain whether the provisions of this Act as to the number of passengers and other matters have been complied with.

52. In any proceeding for the adjudication of [Act VIII, 1876, s. 45.] any penalty incurred under this Act, any document purporting to be a report of such particulars as aforesaid or a copy of the proceedings of any Court of Justice duly authenticated, and also any like document purporting to be made and signed by any person lawfully exercising consular authority on behalf of Her Majesty in any foreign port, shall be received in evidence, if it appears to have been officially transmitted to any officer at or near the place where the proceeding under this Act is had.

53. (1) The Governor-General in Council may [Act VIII, 1876, s. 46.] make rules consistent with this Act, to regulate, in the case of any ship or class of ships to which this Act applies, all or any of the following matters:—

- (a) the scale on which provisions, fuel and water are to be supplied to the passengers or to any class or classes of passengers, and the quality of the provisions, fuel and water; [New.]
- (b) the medical stores and other appliances and fittings to be provided on board for maintaining health, cleanliness and decency;
- (c) the licensing and appointment of medical [Act XVII, 1883, s. 8.] officers in cases where they are required under this Act to be carried;
- (d) the boats, anchors and cables to be provided on board;
- (e) the instruments for purposes of navigation to be supplied;
- (f) the apparatus for the purpose of extinguishing fires on board and the precautions to be taken to prevent such fires;
- (g) the provision of means for making signals [New. cf. 39 of distress, and the supply of lights & 40 Vic., c. inextinguishable in water and fitted for 80, s. 21.] attachment to life-buoys;

The Native Passenger Ships Bill, 1886.
(Chapter VI.—Supplemental Provisions.—Sections 54-59.)
(Schedule.—Enactments repealed.)

[Act XVII, 1883, s. 8.] (h) the functions of the master, medical officer (if any) and other officers of the ship during the voyage;

[Act XVII, 1883, s. 8.] (i) the access of between-decks passengers to the upper deck; and

(j) generally, to carry out the purposes of this Act.

[New.] (2) The Local Government may make rules consistent with this Act to regulate, in the case of any ship or class of ships to which this Act applies, the local limits within which, and the time and mode at and in which, passengers are to be embarked or discharged at any port or place appointed under this Act in that behalf.

[New.] (3) In making a rule under this section, the authority making it may direct that a breach of it shall be punishable with fine which may extend to two hundred rupees, and, when the breach is a continuing breach, with a further fine which may extend to twenty rupees for every day after the first during which the breach continues.

[New.] 54. (1) An authority making rules under the last foregoing section shall, before making them, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made in such manner as the Governor-General in Council, by notification in the *Gazette of India*, prescribes.

(3) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(4) The authority making the rules shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) A rule made under the last foregoing section shall not take effect if it is made by the Governor-General in Council until it has been published in the *Gazette of India*, and if it is made by the Local Government until it has been published in the local official Gazette.

(6) The publication in the Gazette of a rule purporting to be made under that section shall be conclusive proof that it has been duly made.

55. The Local Government shall appoint such persons as it thinks fit to exercise and perform the powers and duties conferred and imposed by this Act.

56. The Governor-General in Council may declare, by notification in the *Gazette of India*, what shall be deemed to be, for the purposes of this Act, "seasons of fair weather" and "seasons of foul weather," and, for sailing vessels and steamers respectively, a "long voyage" and a "short voyage."

57. The Governor-General in Council may by order prescribe, in the case of any ship or class of ships and for all or any voyages to which this Act applies, the number of superficial or of cubic feet of space to be available for passengers; and the order shall override the provisions of sections 18 and 21 so far as they apply to that ship or class of ships.

58. The Local Government may, with the previous sanction of the Governor-General in Council, for any special reason and subject to such conditions as it thinks fit, exempt any ship or class of ships from any provision of this Act.

59. All powers conferred by this Act may be exercised from time to time as occasion requires.

SCHEDULE.

ENACTMENTS REPEALED.

(See section 4.)

Number and year.	Title.	Extent of repeal.
VIII of 1876	Native Passenger Ships Act, 1876.	The whole.
XVII of 1883	Native Passenger Ships Act, 1883.	The whole.
VII of 1884	Indian Steamships Act, 1884.	Section 41.

STATEMENT OF OBJECTS AND REASONS.

The law relating to native passenger ships is contained in three enactments, namely, the Native Passenger Ships Act, VIII of 1876, and the amending Acts, XVII of 1883 and VII of 1884. Further amendments having now become necessary, the opportunity has been taken to consolidate the law in a single measure.

2. The amendments are not numerous and will be noticed in the order in which they occur in the Bill—

(a) *Section 2*.—The primary object of the proviso to sub-section (2) of this section is to confer on the Government of Bombay the power of having certain small vessels engaged in the pilgrim-trade between Western India and the Hedjaz examined with a view to ascertaining whether or not they are seaworthy.

(b) *Section 11, clause (c)*.—The corresponding section of the Act of 1876 requires certificate B to state that provisions, fuel and pure water sufficient for the voyage have been placed on board. It is now proposed to require the certificate to state that the supply is sufficient not only for the voyage but for any probable period of detention in quarantine. On one occasion at least the Government has had to undertake the maintenance of a shipload of pilgrims whose private stock of provisions had become exhausted.

- (c) *Section 41.*—Cases have occurred in which pilgrims who had engaged their passages on the understanding that they would proceed direct to the Hedjaz have been taken on long coasting voyages. The deception thus practised has caused great hardship, pilgrims very frequently taking their own provisions with them (section 18, Act VIII, 1876) and very rarely taking more than is absolutely necessary for their support on the voyage which they believe themselves to have undertaken.
- (d) *Section 53, sub-section (1), clause (g).*—It is proposed, following section 21 of the English Merchant Shipping Act, 1876, to empower the Governor-General in Council to require native passenger ships to be provided with means for making signals of distress and with life-saving apparatus.
- (e) *Section 53, sub-section (2).*—This sub-section is designed to meet a suggestion made by Mr. T. M. Cook, of the firm of Messrs. Thomas Cook & Son, that the embarkation of pilgrims in the "Roads" at Bombay during the monsoon should be forbidden, and that pilgrim-carrying ships should be required to go into dock for the purpose of receiving their passengers during that season.
- (f) *Section 54.*—This section requires drafts of any rules which it is proposed to make under the Act to be published for the information of the public before the rules are made.

The 25th August, 1886.

A. COLVIN.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 1st September, 1886:—

NO. 21 OF 1886.

A Bill to extend the Glanders and Farcy Act, 1879, to the Bombay Presidency.

WHEREAS it is expedient that the Glanders and Farcy Act, 1879, should extend to the territories administered by the Governor of Bombay in Council; It is hereby enacted as follows:—

XX of 1879.

1. The words "the Governor of Bombay in Council" in section 1 of the Glanders and Farcy Act, 1879, are hereby repealed.

XX of 1879.

STATEMENT OF OBJECTS AND REASONS.

OCCASION having arisen in the Bombay Presidency, as it did in Upper India in 1879, for a law to provide for the better prevention of glanders among horses, the Government of Bombay has expressed a wish that the Glanders and Farcy Act, 1879, may be extended to the Bombay Presidency.

The object of this Bill is to give effect to that wish.

C. P. ILBERT.

The 1st September, 1886.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 1st September, 1886:—

No. 22 OF 1886.

A Bill for further shortening the language used in Acts of the Governor-General in Council, and for other purposes.

WHEREAS it is expedient further to shorten the language used in Acts made by the Governor-General in Council, and to make certain further provisions relating to those Acts; It is hereby enacted as follows:—

1. (1) This Act may be called the General Clauses Act, 1886; Short title and commencement. and

(2) It shall come into force at once.

PART I.

ADDITIONAL CLAUSES.

2. This Part shall apply to this Act and to all Acts made by the Governor-General in Council under the Indian Councils Act, 1861, after the passing of this Act.

3. In any Act to which this Part applies, unless there is something repugnant in the subject or context,—

(1) "abet," with its grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code:

(2) "Chapter," "Part" and "schedule" shall denote, respectively, a Chapter and Part of, and schedule to, the Act in which the word occurs:

(3) "sub-section" shall denote a sub-section of the section in which the word occurs:

(4) "commencement", used with reference to an Act, shall mean the day on which the Act comes into force:

(5) "financial year" means the year commencing on the first day of April: [Act I, 1883, s. 2.]

(6) "local authority" shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund: [Act XIII, 1885, s. 3 (7).]

(7) "master," used with reference to a ship, means any person (except a pilot or harbour-master) having for the time being control or charge of the ship: [Act V, 1883, s. 3.]

(8) "offence" shall mean any act or omission made punishable by any law for the time being in force: [Act X, 1882, s. 4 (p).]

(9) "public nuisance" shall have the meaning assigned to that expression in section 268 of the Indian Penal Code: [Act XLV, 1860, s. 268.]

(10) "registered" shall mean registered under the law for the time being in force for the registration of documents: [Act VIII, 1885, s. 3 (18).]

(11) "sign", with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include "mark," with its grammatical variations and cognate expressions: [Act XIV, 1882, s. 2: Act VI, 1886, s. 3.]

(12) "ship" includes every description of vessel used in navigation not exclusively propelled by oars: [Act V, 1883, s. 3.]

(13) "soldier" shall mean a person who is a soldier within the meaning of the Army Act, 1881: [cf. 44 & 45 Vic., c. 58, ss. 176 (f) and 190 (6) and (8).]

(14) "value", used with reference to a suit, shall mean the amount or value of the subject-matter of the suit: and [Act XVIII, 1884, s. 3 (8).]

(15) "write", with its grammatical variations and cognate expressions, shall include "print" and "lithograph", with their grammatical variations and cognate expressions. [Act X, 1882, s. 4 (e): Act XIV, 1882, s. 2.]

4. Where, by an Act to which this Part applies and which is not to come into force immediately on the passing thereof, a power is conferred on the Governor-General in Council or on a Local Government or a High Court to make rules, or to issue orders with respect to the application of the Act, or with respect to the establishment of any Court or office

or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act, the power may be exercised at any time after the passing of the Act, but rules or orders so made or issued shall not take effect till the commencement of the Act.

[Act X, 1882,
s. 557.]

5. Any power conferred on the Governor-General in Council or a Local Government by an Act to which this Part applies may be exercised from time to time as occasion requires.

[cf. Act XI,
1886, s. 26.]

6. Where, by an Act to which this Part applies, a power to make rules is expressed to be given subject to the condition of the rules being made after previous publication, the following provisions shall apply, namely:—

(1) The authority having power to make the rules shall, before making them, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Governor-General in Council or the Local Government prescribes.

(3) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(4) The authority having power to make the rules, and, where the rules are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider the objection or suggestion which may be received by the authority having power to make the rules from any person with respect to the draft before the date so specified.

(5) The publication in an official Gazette of a rule purporting to have been made in exercise of a power to make rules after previous publication shall be conclusive proof that the rule has been duly made.

[cf. 45 & 46
Vic., c. 50, s.
230.]

7. (1) Where a limited time from any date or from the happening of any event is appointed or allowed, by an Act to which this Part applies, for

the doing of any act or the taking of any proceeding in a Court or office, and the last day of the limited time is a day on which the Court or office is closed, then the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

(2) Where, by an Act to which this Part applies, any act or proceeding is directed or allowed to be done or taken in a Court or office on a certain day, then, if the Court or office is closed on that day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

(3) This section does not apply to any act or proceeding to which the Indian Limitation Act, XV of 1877, applies.

8. Where an act or omission constitutes an offence under two or more enactments of which either or any is an Act to which this Part applies, the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

PART II.

SUPPLEMENTAL PROVISIONS.

9. The words "wholly or partially" shall be inserted before the word "repealed" in clause (1) of section 3 of the General Clauses Act, 1868, and shall be deemed to have been there from the commencement of that Act.

10. In the Cantonments Act, 1880, the word "soldier" shall not include a warrant-officer but shall otherwise have the meaning assigned to it by clause (13) of section 3 of this Act.

11. This Act and the General Clauses Act, 1868, shall apply to all Regulations which may receive the assent of the Governor-General under the Statute 33 Victoria, chapter 3, section 1, after the commencement of this Act.

STATEMENT OF OBJECTS AND REASONS.

THIS Bill is supplementary to the General Clauses Act, 1868, and is designed, as stated in the preamble, to further shorten the language used in Acts of the Governor-General in Council.

2. In section 3 there is nothing which calls for remark. The definitions in the section will materially shorten the defining clauses of Acts to be hereafter passed.

3. Section 4 is a repetition of a clause very generally employed by the Council of the Governor-General with the object of enabling the executive authorities, in the interval between the passing of an Act and its coming into force, to make preparations for bringing the Act into full operation as soon as it is legally possible to do so.

4. The English rule that a power given to the Crown by statute, having been once exercised, is exhausted and cannot be exercised again, has been applied by Indian Courts to powers conferred by the Indian legislature on the Governor-General in Council and Local Governments. Section 5 of the Bill is intended to remove the inconvenience resulting from the application of that rule.

5. Provisions in the terms of section 6 have been inserted in no fewer than eighteen Acts during the last three or four years and form part of several pending Bills. Their object is to give persons likely to be affected by statutory rules an opportunity, before the rules are made, of making objections and suggestions with respect to any matter which it is proposed to insert in them.

6. Section 7 is taken from the English Municipal Corporations Act, 1882, and is much needed in this country in the case of acts and proceedings to which the Indian Limitation Act, 1877, does not apply.

7. Section 8 is a repetition of a section which is very frequently inserted in Acts of the Governor-General in Council.

8. Clause (1) of section 3 of the General Clauses Act, 1868, has always been construed by the legislature as though the words "wholly or partially" were inserted before the word "repealed." It is proposed by section 9 of the Bill to insert those words in the clause and to require them to be deemed to have been there since the Act of 1868 was passed.

9. Difficulty has been experienced by some Courts in interpreting the word "soldier" in section 14 of the Cantonments Act, III of 1880. With the judgment of the High Court for the North-Western Provinces at I. L. R. 3 All. 214, to the effect that a warrant-officer is not a soldier within that section, the military authorities are content; but they consider it desirable that the word should have a wider meaning than has recently been assigned to it in Oudh, where the Judicial Commissioner has held a private in an European regiment, employed as a telegraph-signaller, not to be a soldier within the meaning of the section.

10. Section 11 of the Bill applies the General Clauses Act, 1868, and the proposed General Clauses Act, 1886, to Regulations to be hereafter made under the Statute 33 Vic., chapter 3.

The 1st September, 1886.

C. P. ILBERT.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 1st September, 1886:—

NO. 23 OF 1886.

A Bill to amend the Code of Civil Procedure and the Indian Limitation Act, 1877.

WHEREAS it is expedient to amend the Code of Civil Procedure and the Indian Limitation Act, 1877; It is hereby enacted as follows:—

1. (1) This Act may be called the Civil Procedure Code Amendment Act, 1886; and

(2) It shall come into force on the first day of January, 1887.

2. (1) In this Act "section" means a section, and "Chapter" a Chapter, of the Code of Civil Procedure.

(2) All references to that Code made in enactments heretofore passed or hereafter to be passed shall be read as if made to that Code as amended by this Act.

3. The second paragraph of section 8 is hereby repealed.

4. In section 17, after Explanation II, the following shall be inserted, namely:—

"EXPLANATION III.—In suits arising out of contract, the cause of action arises within the meaning of this section at any of the following places, namely:—

- (i) at the place where the contract was made,
- (ii) at the place where the contract was to be performed, and
- (iii) at the place where in performance of the contract any money to which the suit relates was expressly or impliedly payable."

5. In section 27, after the words "the Court may" the words "at any time" shall be inserted.

6. In section 53, for the words "at or before the first hearing" the words "at any stage of the suit" shall be substituted.

7. Section 95 is hereby repealed.

8. In section 137, after the word "pleader" the words "or recognised agent" shall be inserted.

9. (1) For the proviso to section 141 the following shall be substituted, namely:—

"Provided that—

(a) if the document is an entry in a shop-book or other book, the party on whose behalf the book is produced may furnish a copy of the entry; and

(b) if the document is an entry in a record produced from a public office or by a public officer, or an entry in a book belonging to a person other than a party on whose behalf the book is produced, the Court may require a copy of the entry to be furnished—

(i) where the record or book is produced on behalf of a party, then by that party, or

(ii) where the record or book is produced in obedience to an order of the Court acting of its own motion, then by either or any party;

and the copy of the entry may be endorsed as aforesaid and shall be filed as part of the record, and the Court shall mark the entry and shall then return the book or record to the person producing it."

(2) To the same section the following shall be added, namely:—

"If a party required under this section to furnish a copy of an entry in a record or book fails to comply with the requisition, the Court may cause the copy to be made and order the cost thereof to be levied by attachment and sale of the moveable property of the defaulting party."

10. To section 216 the following shall be added, namely:—

"The provisions of this section shall apply whether the set-off is admissible under section 111 or otherwise."

11. For the proviso to section 245 the following shall be substituted, namely:—

Amendment of section 245. "Provided that, in the case of a decree for money,—

(a) if the Court has reason to believe that the decree can be satisfied by execution against the property of the debtor, it may in its discretion refuse execution against his person;

(b) the value of the property attached shall, as nearly as may be, correspond with the amount for which the decree has been made."

12. (1) In section 266, for clause (h) the following shall be substituted, namely:—

"(h) the salary of a public officer or of any servant of a Railway Company to the extent of—

(i) the whole of the salary where the salary does not exceed twenty rupees;

(ii) twenty rupees where the salary exceeds twenty rupees and does not exceed forty rupees; and

(iii) one moiety of the salary in any other case."

(2) In the same section, after clause (l), the following shall be inserted, namely:—

"(m) any allowance declared by any law passed under the Indian Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council to be exempt from liability to attachment or sale in execution of a decree."

13. In section 271, between the words "or shall" and the words "break open any outer door of a dwelling-house" the words "without the special order of the Court causing the execution of the process" shall be inserted.

Addition to section 320. 14. To section 320 the following shall be added, namely:—

[I. L. R. 5 All. 314.] "The rules may also provide for the cases in which, the authorities to which, and the conditions on which, orders passed by the Collector or his subordinates under this Code or the rules thereunder shall be subject to appeal, and for the revision of the proceedings of appellate authorities in respect of those orders."

[I. L. R. 7 Bom. 332.] "In executing a decree transferred to the Collector under this section, the Collector and his subordinates shall be subject to the control of the Court only to the extent expressly provided by this Code."

15. (1) In section 341, after clause (f), the following shall be inserted, namely:—

"or

"(g) if his discharge is ordered by the Government on the ground of his suffering from any infectious or contagious disease, or by the District Court or, in a presidency-town, the committing Court on the ground of his suffering from any serious illness."

(2) In the proviso to the same section the word "committing" shall be inserted before the word "Court."

16. (1) In section 349, for the words "is under arrest" the words "is in custody under the foregoing provisions of this Code" shall be substituted.

(2) In section 350, for the words "judgment-debtor's discharge" the word "application", and for the words "is not entitled" the words "ought not", shall be substituted.

(3) For section 351 the following shall be substituted, namely:—

"351. (1) If the Court is satisfied that the Declaration of insolvency and appointment of receiver. statements in the application are substantially true, the Court may declare the judgment-debtor to be an insolvent and appoint a receiver of his property."

"(2) If the Court is not so satisfied, it shall reject the application."

(4) In section 352 the word "then" shall be repealed, and to that section the following shall be prefixed, namely:—

"When the Court has declared the judgment-debtor to be an insolvent."

(5) To section 355 the following shall be added, namely:—

"In determining whether the insolvent should be discharged, and, if so, on what conditions, the Court shall have regard to whether he has committed any of the acts of misconduct referred to in section 359."

(6) In section 357 the figures and word "351 or" shall be omitted in each place where they occur.

(7) In section 359, for the words "Whenever, at the hearing under section 350 it is proved that the applicant has—" the words "Whenever in the course of proceedings on an application under this Chapter it is proved that the judgment-debtor has—" shall be substituted.

(8) For the second paragraph of section 360 the following shall be substituted, namely:—

"A Court so invested may entertain an application under section 344 by any person who has been arrested or imprisoned, or against whose property an order of attachment has been made, in execution of a decree for money passed by that Court."

17. (1) For sections 363 and 364 the following shall be substituted, namely:—

"363. If there are more plaintiffs than one, and any of them dies, and if the right to sue does not survive to the surviving plaintiff or plaintiffs alone, but survives to him or them and the legal representative of the deceased plaintiff jointly, the Court shall cause the legal representative, if any, of the deceased plaintiff to be made a party, and shall cause an entry to that effect to be made on the record, and the suit shall thereupon proceed."

[I. L. R. 5 Cal. 5 Mad. 1 All. 634 Vol. X 7, Civil ment 1 Rules Judicia Acts.]

“Where an authority competent in this behalf has appointed or declared a guardian or guardians of the person or property, or both, of the minor, the Court shall appoint him or one of them, as the case may be, to be the guardian for the suit under this section unless it considers, for reasons to be recorded by it, that some other person ought to be so appointed.”

(2) After section 446 the following shall be added, namely :—

"If the next friend is not a guardian appointed or declared by an authority competent in this behalf, and the application under this section is made by a guardian so appointed or declared who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor."

(3) For section 461 the following shall be substituted, namely :—

"461. (1) A next friend or guardian for the suit shall not receive any money or other moveable property under a decree or order in favour of a minor without the leave of the Court.

"(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is not thereby entitled to receive the money or other moveable property under the decree or order, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application."

(4) For section 464 the following shall be substituted, namely :—

"464. Nothing in this Chapter shall be construed to affect, or in any way derogate from, the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind."

[2 Swanst. 518, and I. L. R. 8 Cal. 32, and 7 All. 178.] 27. In section 539, for the words "having a direct interest" the words "having an interest" shall be substituted.

[I. L. R. 8 Cal. 272, 2 Bom. 644, & 4 All. 387.] 28. To section 540 the following shall be added, namely :—

"An appeal may lie under this section from an original decree passed *ex parte*."

[Cf. Act X, 1877, s. 561, & I. L. R. 8 Bom. 559 & 4 All. 248.] 29. (1) For the proviso to the first paragraph of section 561 the following shall be substituted, namely :—

"provided he has, not less than seven days before the hearing, filed the objection in the Appellate Court and left with the chief ministerial officer of the Court a notice of the filing thereof for service on the appellant or his pleader."

[I. L. R. 4 All. 430.] (2) To the same section the following shall be added, namely :—

XV of 1877. "The provisions of section 5 of the Indian Limitation Act, 1877, applicable to an appeal shall apply to the objection and notice under this section."

30. In section 568, clause (b), for the word "for" where that word first occurs, the word "or" shall be substituted.

[I. L. R. 2 Mad. 75.] 31. To section 584 the following shall be added, namely :—

"An appeal may lie under this section from an appellate decree passed *ex parte*."

32. In section 588, clause (9), for the word "or" the word "for" shall be substituted. [Gazette India, 1886, August, 18, Part I, page 355.]

33. Section 599, and in section 601 the words "within thirty days from the date of the order", are hereby repealed.

34. To section 626 the following proviso shall be added, namely :—

"and
(c) an application made under section 624 to the Judge who delivered the judgment may, if that Judge has ordered notice to issue under proviso (a) to this section, be disposed of by his successor." [I. L. R. Cal. 80 and All. 276.]

35. (1) For the third paragraph of section 648 the following shall be substituted :—

"and the Court making an arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he shows cause to the satisfaction of the former Court why he should not be sent to the latter Court, or unless he furnishes sufficient security for his appearance before the latter Court or (where the case is one under Chapter XXXIV) for satisfying any decree that may be passed against him by that Court, in either of which cases the Court making the arrest shall release him."

(2) To section 648 the following shall be added, namely :— [Cf. P. Cause Bill, 1881.]

"Where a person to be arrested or property to be attached under this section resides or is situated within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal or at Madras or Bombay, or of the Recorder of Rangoon, the copy of the warrant of arrest or of the order of attachment, and the probable amount of the costs of the arrest or attachment, shall be sent to the Court of Small Causes of Calcutta, Madras, Bombay or Rangoon, as the case may be, and that Court, on receipt of the copy and amount, shall proceed as if it were the District Court."

36. To section 652 the following shall be added, namely :— [New Addition to section 652.]

"A High Court not established under the Statute 24 and 25 Victoria, chapter 104 (*an Act for establishing High Courts of Judicature in India*) may from time to time, with the previous sanction of the Local Government, make, with respect to any matter other than procedure, any rule which any High Court so established might under section 15 of that Statute make with respect to any such matter for any part of the territories under its jurisdiction which is not included within the limits of a presidency-town. Rules so made shall be published in the same manner, and shall thereupon have the same force, as rules made and published under this section for the regulation of matters connected with procedure."

37. (1) Nos. 171, 171A and 171B of the second schedule to the Indian Limitation Act, 1877, are hereby repealed.

(2) In No. 171C of that schedule, for the words "of the same Code" the words and figures "or section 582 of the Code of Civil Procedure" shall be substituted. [Cf. I. L. R. 7 All. 211, Civil Appeal No. XIV of 1886.]

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to correct certain minor defects in the Code of Civil Procedure which have been brought to the notice of the Government of India during the four years which have elapsed since the Code was passed, and to amend that portion of the Indian Limitation Act, 1877, which relates to Chapter XXI of the Code.

The several amendments which it is proposed to make in the Code are noticed in the following remarks in the order in which they occur in the Bill:—

Section 3.—The second paragraph of section 8 of the Code, which, as the second paragraph of section 8 of Act X of 1877, was repealed by the Presidency Small Cause Courts Act, XV of 1882, was unintentionally reproduced in Act XIV of 1882. Its place has been taken by section 23 and the second schedule of the Presidency Small Cause Courts Act.

Section 4.—The Explanation which it is proposed to add to section 17 of the Code is suggested by the cases reported at I. L. R. 4 All. 423 and 5 All. 277.

Section 5.—The addition proposed by this section to be made to section 27 of the Code has been suggested by Mr. Justice Plowden of the Punjab Chief Court with reference to the remark of Pontifex J. at I. L. R. 6 Cal. 376.

Section 6.—In proposing to amend section 53 of the Code in the manner set forth in this section, the Government of India has followed the almost unanimous advice of the authorities whom it consulted in its letter Nos. 22-27, dated the 5th January, 1886.

Section 7.—In April, 1882, the Governor-General in Council published a resolution directing that postage-charges on all processes, notices and such other documents as are issued from any Court, and are required to be transmitted by post, should in future be paid by means of service postage-stamps without any additional charge being levied from the parties at whose instance the documents are issued. This resolution practically superseded the section of the Code which it is now proposed to repeal.

Section 8.—The addition to section 137 of the Code has been suggested by Bábu Brajendra Coommar Seal, the District Judge of Bankoora, on the ground of the difficulty which occurs in obtaining affidavits where the applicant under the section is a *pardānashin* lady.

Section 9.—The object of the amendments proposed to be made in section 141 of the Code is to remove the inconvenience caused to both public officers and private persons by the detention of their records in Civil Courts. The detention of the records of a village-accountant may bring his work to a standstill, and the Hon'ble Mr. Gibbon stated to the Select Committee on the Bengal Tenancy Bill that the inconvenience is quite as great in the case of private as of public records.

Section 10.—The addition to section 216 removes the doubt expressed in the case reported at I. L. R. 7 All. 284.

Section 11.—The circumstances which have suggested clause (a) of the proposed proviso to section 245 of the Code have been described in the Statement of Objects and Reasons of the Debtors Bill. If the clause becomes part of the Code, the Courts will be competent to require the property of a judgment-debtor to be proceeded against before proceedings are taken against his person.

Section 12.—As clause (h) of section 266 is at present drawn, half the salary of a public officer or railway servant in receipt of a monthly salary of twenty-one rupees may be attached. This was not the intention of the legislature.

The primary object of the additional clause (m) which it is proposed to insert in the section is to empower the Council of the Governor of Bombay to proceed with a Bill to declare and amend the law relating to *toda girás* allowances.

Section 13.—This section has been introduced at the suggestion of the Advocate General of Bombay, its object being to abolish, as regards the seizure of moveable property, the privilege conferred on debtors by the fourth resolution in Semayne's case (Smith's Leading Cases, Vol. I). At present that privilege operates mainly to enable debtors to avoid or delay payment of their just debts.

Section 14.—The necessity for the first of the proposed additions to section 320 of the Code is shown by the Full Bench judgment of the High Court for the North-Western Provinces at I. L. R. 5 All. 314. As regards the second addition, it appears to the Government of India that, if the Collector is to act effectively under section 320 and the following sections of the Code, he ought to be subject to the control of the Civil Court only to the extent expressly provided by the Code, being as to the rest subject only to the control of the higher revenue authorities.

Section 15.—The addition to section 341 has been proposed by the High Court and Government of Madras with reference to cases which have recently occurred in Southern India. In one of these cases the debtor committed to prison was suffering from leprosy in an advanced

form, and in the other the prisoner was suffering from illness so serious as in the opinion of the medical officer to render it necessary that he should be immediately released from confinement.

Section 16.—The object of sub-sections (1) to (7) is to assimilate practice under Chapter XX of the Code to that to be prescribed by the proposed Indian Bankruptcy Act.

Sub-section (8) is designed to extend the jurisdiction of subordinate Courts in matters of insolvency. Most cases under Chapter XX are of little importance and may properly be disposed of by munsifs. Where any considerable sum is involved, the District Judge, who will have concurrent jurisdiction, can transfer the case to his own Court.

Sections 17 and 37.—The amendments proposed to be made in Chapter XXI of the Code and in the second schedule to the Indian Limitation Act, 1877, have their origin in the complaints of the hardship caused by the rules of limitation required by that Chapter and schedule to be observed in the substitution of legal representatives in the place of deceased parties to suits and appeals. With respect to these portions of the Code and Limitation Act, Mr. Rattigan, the Government Advocate of the Panjab, by whom the form of the amendments has been suggested, has recorded the following remarks :—

“Considerable hardship has been experienced in the Panjab in the working of those sections of the Civil Procedure Code which deal with the procedure to be followed in the case of the death of a plaintiff or defendant. It is of course perfectly correct and desirable that in the case of the death of one of the litigant parties, where the right to sue or be sued still survives, his legal representatives should be brought on the record, for it is clear that without such a process the suit could not validly proceed. But the hardship consists in requiring the legal representatives to apply for the above purpose within a comparatively short period after the death of the deceased plaintiff or defendant. In the Panjab it frequently happens in land-suits that fifty or a hundred persons are obliged, owing to community of interests, to sue or be sued in the one suit. Now, when such a suit comes up eventually to the Chief Court, a date for hearing is fixed which is generally not less than a year, and, at present, owing to the state of the work in the Court, is not unfrequently eighteen months from the date of filing the appeal. Within this period it often happens that one or more of the litigants is or are carried off by death from disease or violence; the representatives of the deceased, or the appellants, being ignorant agriculturists and not knowing the requirements of the law, take no action to put the representatives on the record, and thus, when the appeal finally comes on for hearing, a pleader on the opposite side takes the objection that no application has been made within the prescribed period, and, this being ascertained to be the fact, the appeal abates, and the unfortunate appellants find themselves deprived of all remedy simply in consequence of a harsh limitation law of which they had no knowledge. It is true that sections 368 and 371 allow the Court to extend the period if the plaintiff (or appellant-plaintiff) adduces sufficient cause for not making the required application within the prescribed period. But in nine cases out of ten of the kind I refer to the only cause assignable is ignorance of the requirements of the law—and this of course cannot be deemed to be ‘sufficient’ within the meaning of the section. So that the law as it stands at present works considerable hardship, and the hardship is irremediable.

“The question therefore arises, whether it is really necessary to prescribe a hard-and-fast period of limitation within which alone an application to put the legal representatives of a deceased plaintiff or defendant on the record can be entertained.

“For my own part I cannot see that there is any such necessity. If I remember rightly, the rules framed under the English Judicature Acts do not prescribe a period for such applications, and I do not see why the Indian law should do so. It would surely be sufficient to require the legal representatives of a deceased plaintiff or defendant, where the right to sue or be sued survived, to be put on the record; and to leave it to the Court to direct this to be done within such time, and upon such terms as to costs or otherwise, as it thinks fit.”

Sub-section (6) of section 15 of the Bill is intended to cure the defect noticed at I. L. R. 9 Bom. 56.

Section 18.—This section, which would restore the rule of the Code of 1859, has been proposed by Mr. Justice Straight.

Section 19.—The amendment made in section 386 of the Code by Act XII of 1879, whereby commissions to examine witnesses are required to be issued to a Court or a pleader of a High Court, has caused much inconvenience. In remote parts of the country High Court pleaders do not exist, and in few parts have Judges leisure to close their Courts and travel considerable distances for the purpose of taking the evidence of persons who cannot appear before them. Moreover, in some Provinces the Government maintains a staff of officials among whose duties is the execution of these commissions.

Section 20.—The addition which it is proposed to make to section 396 has been suggested by a gentleman of long standing at the Bombay bar. It is based on the Partition Act, 1868 (31 & 32 Vic., c. 40).

Section 21.—A Government Pleader does not exist in every Court.

Section 22.—It has been doubted whether the Government is empowered by section 432 to appoint a person generally to prosecute and defend all suits which it may from time to time be necessary to prosecute or defend on behalf of a Prince or Chief. It is obviously inconvenient that the Government should be compelled to make a special appointment in the case of each particular suit.

Sections 23 and 25.—The object of these sections is (a) to define more precisely, with reference to the definition of “Government” in section 2 of the Code, by whom consent to the institution of a suit against a Sovereign Prince, ruling Chief, ambassador or envoy may be given; (b) to make the provisions of section 433 more elastic as regards the mode of giving the consent, the

cases in which the consent may be given, and the Courts to which the consent may apply; and (c) to prescribe the name in which a Prince or Chief may sue and is to be sued. To effect this last object it is proposed that a Prince or Chief may sue and shall ordinarily be sued in the name of his State.

Section 24.—Section 434 of the Code, under which execution may be had of a decree in a suit between British subjects, is out of place in a chapter relating to Suits by Aliens and by or against Foreign and Native Rulers. The section may conveniently take the place of section 651, which was repealed in March last by Act X of 1886.

Section 26.—The amendments proposed by this section to be made in Chapter XXXI of the Code are those referred to in paragraph 4 of the Statement of Objects and Reasons of the Guardians and Wards Bill. The additions to sections 443 and 443 confer on a guardian who has been appointed, or whose title has been declared, by a Civil Court, Court of Wards or other competent authority, a preferential right to be appointed next friend or guardian for the suit. The amendment of section 461 gives effect to a suggestion by Sir Charles Turner, late Chief Justice of Madras, that, when a Court makes over property to a next friend or guardian for the suit who is not a duly constituted guardian of the property of the minor, it should be required to give such directions as, having regard to the nature of the property, may sufficiently protect it from waste and secure its proper application. Section 464, as amended, saves all local laws relating to suits by or against minors or by or against lunatics or other persons of unsound mind.

Section 27.—There are two reported cases, I. L. R. 8 Cal. 32, and I. L. R. 7 All. 178, with respect to the meaning to be assigned to the words “direct interest” in section 539. It appears that the authority for the insertion of the words “having a direct interest in the trust” is *In the matter of the Masters, Governors and Trustees of the Bedford Charity* (2 Swanst. 470). There certain Jews, some being residents of Bedford and others being members of Dutch and German Synagogues in London, sought to establish the title of Jews to the benefit of the Bedford Charity. It was contended that under Sir Samuel Romilly’s Act (52 Geo. III, c. 101), on which section 539 of the Code of Civil Procedure is based, *any two or more persons* might be petitioners, and therefore the Jews of the London Synagogues, who, though *not interested*, considered it their duty to support the claims of those of their own persuasion, might be petitioners. With respect to that contention, Lord Eldon, admitting that every person possessing the character of an inhabitant of Bedford and describing himself as an object of the charity was entitled to apply to the Court, asked how he could notice the members of the London Synagogues. “Under Sir Samuel Romilly’s Act,” he observed, * * * “no person can petition who has not a *direct interest* in the charity. The Act indeed, authorises ‘any two or more persons’ to present a petition, but I conceive that those words must be understood to mean persons having *an interest*. * * * Those who are *interested* in the fund, provided Sir Samuel Romilly’s Act, or the Bedford Charity Act, apply to this case, namely, persons residing in Bedford, are entitled to the summary interference of the Court, but I know not on what ground these gentlemen residing in London can appear as petitioners.”

The contention which Lord Eldon overruled was that any one, though he had no interest whatever, might petition. He did, no doubt, remark that “no person can petition who has not a direct interest,” but he immediately qualified that remark by adding that the words of the Act “must be understood to mean persons having an interest.” The case cannot, therefore, it seems, be taken as an authority for the proposition that the interest of the petitioner must be direct. On the contrary, it may be inferred from the case that an indirect interest would have been deemed sufficient; for, when, in support of the contention that the words “any persons” comprehend persons who may not have an interest, the counsel for the petitioners pointed out that, in the instance of charities for relief of the blind and the poor, it had been the practice to receive the petition of the minister of the parish, Lord Eldon observed that “the petition of the minister of the parish is received, because the poor may be burdensome to him.”

It may be doubted whether the case justified the insertion of the word “direct” in the Code, where it assumes a peculiar pointedness and must have some definite meaning assigned to it; and after consultation with the High Courts it has been decided to propose the removal of the word.

Sections 28 and 31.—It is proposed, in accordance with the advice of the great majority of the authorities consulted by the Government of India in its letter of the 5th January last, to declare *ex parte* decrees to be appealable.

Section 29.—Section 561 has been so amended as to require the objection to be filed in the Appellate Court, and notice of the filing thereof to be given to the appellant, and to admit of the objection being filed and the notice given at any time not less than seven days before the actual date of hearing; and, on the suggestion of Bábú Brajendra Coomar Seal, it applies to the objection and notice under the provisions of section 5 of the Indian Limitation Act, 1877, applicable to an appeal.

Sections 30 and 32.—The amendments proposed to be made by these sections merely correct typographical errors in sections 568 and 588 of the Code.

Section 33.—Section 599, and the portion of section 601 which it is proposed to repeal, were repealed by Act XV of 1877 and were unintentionally reproduced in the Code of 1882.

Section 34.—This section removes a doubt which has been expressed in the cases noted on the margin of the section with respect to the construction to be placed on the word “made” in section 624.

Section 35.—Sub-section (1) of this section has been suggested by the following remarks of the Hon’ble Judges of the High Court at Fort William in their Registrar’s reply to the letter of the Government of India of the 5th January last:—

“I am further to request attention to another point in this section (648) which, though not referred to in your letter, seems to the Judges to call for notice. The section gives absolute power to a Court to cause the arrest through another Court of a person summoned as a witness, and so to cause him to be sent under arrest to the Court issuing the process. The Court to which the warrant is sent has no power of hearing the person arrested or of dealing with any question except the giving of security by him. It seems to the Judges that this is a power far too great to be entrusted at any rate to the subordinate Courts in the Mufassal.”

Sub-section (2) has been transferred to this Bill from the Provincial Small Cause Courts Bill, and will be of general application instead of being applicable to Courts of Small Causes only. With respect to the necessity for this addition to section 648, the District Judge of the 24-Parganas writes as follows:—

“Under section 648 I would also beg to point out that a warrant for the arrest of a person residing within the limits of the original jurisdiction must be executed through the High Court. This is very inconvenient to small suitors, and, in a case which occurred in my Court only a few weeks ago, a defendant preferred abandoning all attempts to get a recusant witness into Court to undergoing the trouble and expense of having a warrant of arrest served through the Original Side of the High Court. I would suggest that the procedure prescribed by section 86 should be made applicable to section 648, and that warrants of arrest which are to be served within the original jurisdiction should be executed by the Small Cause Court.”

Section 36.—This section is designed to remove a doubt as to the extent of the powers of unchartered High Courts to make rules on matters not strictly connected with procedure.

The 1st September, 1886.

C. P. ILBERT.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.



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PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations,
or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 1st September, 1886 :—

NO. 21 OF 1886.

A Bill to extend the Glanders and Farcy Act, 1879, to the Bombay Presidency.

WHEREAS it is expedient that the Glanders and Farcy Act, 1879, should extend to the territories administered by the Governor of Bombay in Council; It is hereby enacted as follows :—

XX of 1879.

1. The words "the Governor of Bombay in Council" in section 1 of the Glanders and Farcy Act, 1879, are hereby repealed.

XX of 1879.

STATEMENT OF OBJECTS AND REASONS.

OCCASION having arisen in the Bombay Presidency, as it did in Upper India in 1879, for a law to provide for the better prevention of glanders among horses, the Government of Bombay has expressed a wish that the Glanders and Farcy Act, 1879, may be extended to the Bombay Presidency.

The object of this Bill is to give effect to that wish.

C. P. ILBERT.

The 1st September, 1886.

S. HARVEY JAMES,
Offg. Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 1st September, 1886:—

No. 22 OF 1886.

A Bill for further shortening the language used in Acts of the Governor-General in Council, and for other purposes.

WHEREAS it is expedient further to shorten the language used in Acts made by the Governor-General in Council, and to make certain further provisions relating to those Acts; It is hereby enacted as follows:—

1. (1) This Act may be called the General Short title and commencement. Clauses Act, 1886; and
(2) It shall come into force at once.

PART I.

ADDITIONAL CLAUSES.

2. This Part shall apply to this Act and to all Acts made by the Governor-General in Council under the Indian Councils Act, 1861, after the passing of this Act.

3. In any Act to which this Part applies, unless there is something repugnant in the subject or context,—

(1) "abet," with its grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code:

(2) "Chapter", "Part" and "schedule" shall denote, respectively, a Chapter and Part of, and schedule to, the Act in which the word occurs:

(3) "sub-section" shall denote a sub-section of the section in which the word occurs:

(4) "commencement", used with reference to an Act, shall mean the day on which the Act comes into force:

(5) "financial year" means the year commencing on the first day of April: [Act I, 1883, s. 2.]

(6) "local authority" shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund: [Act XIII, 1885, s. 3 (7).]

(7) "master," used with reference to a ship, means any person (except a pilot or harbour-master) having for the time being control or charge of the ship: [Act V, 1883, s. 3.]

(8) "offence" shall mean any act or omission made punishable by any law for the time being in force: [Act X, 1882, s. 4 (p).]

(9) "public nuisance" shall have the meaning assigned to that expression in section 268 of the Indian Penal Code: [Act XLV, 1860, s. 268.] XLV of 1860.

(10) "registered" shall mean registered under the law for the time being in force for the registration of documents: [Act VIII, 1885, s. 3 (18).]

(11) "sign", with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include "mark," with its grammatical variations and cognate expressions: [Act XIV, 1882, s. 2: Act VI, 1886, s. 3.]

(12) "ship" includes every description of vessel used in navigation not exclusively propelled by oars: [Act V, 1883, s. 3.]

(13) "soldier" shall mean a person who is a soldier within the meaning of the Army Act, 1881: [cf. 44 & 45 Vic., c. 58, ss. 176 (1) and 190 (6) and (8).] 44 & 45 Vic., c. 58.

(14) "value", used with reference to a suit, shall mean the amount or value of the subject-matter of the suit: and [Act XVIII, 1884, s. 3 (8).]

(15) "write", with its grammatical variations and cognate expressions, shall include "print" and "lithograph", with their grammatical variations and cognate expressions: [Act X, 1882, s. 4 (e): and Act XIV, 1882, s. 2.]

4. Where, by an Act to which this Part applies and which is not to come into force immediately on the passing thereof, a power is conferred on the Governor-General in Council or on a Local Government or a High Court to make rules, or to issue orders with respect to the application of the Act, or with respect to the establishment of any Court or office

or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act, the power may be exercised at any time after the passing of the Act, but rules or orders so made or issued shall not take effect till the commencement of the Act.

[Act X, 1882,
s. 557.]

5. Any power conferred on the Governor-General in Council or a Local Government by an Act to which this Part applies may be exercised from time to time as occasion requires.

[cf. Act XI,
1886, s. 26.]

6. Where, by an Act to which this Part applies, a power to make rules is expressed to be given subject to the condition of the rules being made after previous publication, the following provisions shall apply, namely:—

(1) The authority having power to make the rules shall, before making them, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Governor-General in Council or the Local Government prescribes.

(3) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(4) The authority having power to make the rules, and, where the rules are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider the objection or suggestion which may be received by the authority having power to make the rules from any person with respect to the draft before the date so specified.

(5) The publication in an official Gazette of a rule purporting to have been made in exercise of a power to make rules after previous publication shall be conclusive proof that the rule has been duly made.

[cf. 45 & 46
Vic., c. 50, s.
230.]

7. (1) Where a limited time from any date or from the happening of any event is appointed or allowed, by an Act to which this Part applies, for

the doing of any act or the taking of any proceeding in a Court or office, and the last day of the limited time is a day on which the Court or office is closed, then the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

(2) Where, by an Act to which this Part applies, any act or proceeding is directed or allowed to be done or taken in a Court or office on a certain day, then, if the Court or office is closed on that day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

(3) This section does not apply to any act or proceeding to which the Indian Limitation Act, XV of 1877, applies.

8. Where an act or omission constitutes an offence under two or more enactments of which either or any is an Act to which this Part applies, the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

PART II.

SUPPLEMENTAL PROVISIONS.

9. The words "wholly or partially" shall be inserted before the word "repealed" in clause (1) of section 3 of the General Clauses Act, 1868, and shall be deemed to have been there from the commencement of that Act.

10. In the Cantonments Act, 1880, the word "soldier" shall not include a warrant-officer but shall otherwise have the meaning assigned to it by clause (13) of section 3 of this Act.

11. This Act and the General Clauses Act, 1868, shall apply to all Regulations which may receive the assent of the Governor-General under the Statute 33 Victoria, chapter 3, section 1, after the commencement of this Act.

STATEMENT OF OBJECTS AND REASONS.

THIS Bill is supplementary to the General Clauses Act, 1868, and is designed, as stated in the preamble, to further shorten the language used in Acts of the Governor-General in Council.

2. In section 3 there is nothing which calls for remark. The definitions in the section will materially shorten the defining clauses of Acts to be hereafter passed.

3. Section 4 is a repetition of a clause very generally employed by the Council of the Governor-General with the object of enabling the executive authorities, in the interval between the passing of an Act and its coming into force, to make preparations for bringing the Act into full operation as soon as it is legally possible to do so.

4. The English rule that a power given to the Crown by statute, having been once exercised, is exhausted and cannot be exercised again, has been applied by Indian Courts to powers conferred by the Indian legislature on the Governor-General in Council and Local Governments. Section 5 of the Bill is intended to remove the inconvenience resulting from the application of that rule.

5. Provisions in the terms of section 6 have been inserted in no fewer than eighteen Acts during the last three or four years and form part of several pending Bills. Their object is to give persons likely to be affected by statutory rules an opportunity, before the rules are made, of making objections and suggestions with respect to any matter which it is proposed to insert in them.

6. Section 7 is taken from the English Municipal Corporations Act, 1882, and is much needed in this country in the case of acts and proceedings to which the Indian Limitation Act, 1877, does not apply.

7. Section 8 is a repetition of a section which is very frequently inserted in Acts of the Governor-General in Council.

8. Clause (1) of section 3 of the General Clauses Act, 1868, has always been construed by the legislature as though the words "wholly or partially" were inserted before the word "repealed." It is proposed by section 9 of the Bill to insert those words in the clause and to require them to be deemed to have been there since the Act of 1868 was passed.

9. Difficulty has been experienced by some Courts in interpreting the word "soldier" in section 14 of the Cantonments Act, III of 1880. With the judgment of the High Court for the North-Western Provinces at I. L. R. 3 All. 214, to the effect that a warrant-officer is not a soldier within that section, the military authorities are content; but they consider it desirable that the word should have a wider meaning than has recently been assigned to it in Oudh, where the Judicial Commissioner has held a private in an European regiment, employed as a telegraph-signaller, not to be a soldier within the meaning of the section.

10. Section 11 of the Bill applies the General Clauses Act, 1868, and the proposed General Clauses Act, 1886, to Regulations to be hereafter made under the Statute 33 Vic., chapter 3.

The 1st September, 1886.

C. P. ILBERT.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 1st September, 1886:—

NO. 23 OF 1886.

A Bill to amend the Code of Civil Procedure and the Indian Limitation Act, 1877.

WHEREAS it is expedient to amend the Code of Civil Procedure and the Indian Limitation Act, 1877; It is hereby enacted as follows:—

1. (1) This Act may be called the Civil Procedure Code Amendment Act, 1886; and

(2) It shall come into force on the first day of January, 1887.

2. (1) In this Act "section" means a section, and "Chapter" a Chapter, of the Code of Civil Procedure.

(2) All references to that Code made in enactments heretofore passed or hereafter to be passed shall be read as if made to that Code as amended by this Act.

3. The second paragraph of section 8 is hereby repealed.

4. In section 17, after Explanation II, the following shall be inserted, namely:—

"EXPLANATION III.—In suits arising out of contract, the cause of action arises within the meaning of this section at any of the following places, namely:—

- (i) at the place where the contract was made,
- (ii) at the place where the contract was to be performed, and
- (iii) at the place where in performance of the contract any money to which the suit relates was expressly or impliedly payable."

5. In section 27, after the words "the Court may" the words "at any time" shall be inserted.

6. In section 53, for the words "at or before the first hearing" the words "at any stage of the suit" shall be substituted.

7. Section 95 is hereby repealed.

8. In section 137, after the word "pleader" the words "or recognised agent" shall be inserted.

9. (1) For the proviso to section 141 the following shall be substituted, namely:—

"Provided that—

(a) if the document is an entry in a shop-book or other book, the party on whose behalf the book is produced may furnish a copy of the entry; and

(b) if the document is an entry in a record produced from a public office or by a public officer, or an entry in a book belonging to a person other than a party on whose behalf the book is produced, the Court may require a copy of the entry to be furnished—

(i) where the record or book is produced on behalf of a party, then by that party, or

(ii) where the record or book is produced in obedience to an order of the Court acting of its own motion, then by either or any party;

and the copy of the entry may be endorsed as aforesaid and shall be filed as part of the record, and the Court shall mark the entry and shall then return the book or record to the person producing it."

(2) To the same section the following shall be added, namely:—

"If a party required under this section to furnish a copy of an entry in a record or book fails to comply with the requisition, the Court may cause the copy to be made and order the cost thereof to be levied by attachment and sale of the moveable property of the defaulting party."

10. To section 216 the following shall be added, namely:—

"The provisions of this section shall apply whether the set-off is admissible under section 111 or otherwise."

[I. L. R. 9 Cal. 695; 6 Mad. 239; 5 Bom. 609; and 7 All. 79.]

[Government of India (Financial Dept.) Resolution No. 225, dated the 12th April, 1882.]

[Cf. s. 162 of the Code.]

[I. L. R. 7 All. 284.]

11. For the proviso to section 245 the following shall be substituted, namely:—

Amendment of section 245. "Provided that, in the case of a decree for money,—

(a) if the Court has reason to believe that the decree can be satisfied by execution against the property of the debtor, it may in its discretion refuse execution against his person;

(b) the value of the property attached shall, as nearly as may be, correspond with the amount for which the decree has been made."

12. (1) In section 266, for clause (h) the following shall be substituted, namely:—

Amendment of, and addition to, section 266. "(h) the salary of a public officer or of any servant of a Railway Company to the extent of—

(i) the whole of the salary where the salary does not exceed twenty rupees;

(ii) twenty rupees where the salary exceeds twenty rupees and does not exceed forty rupees; and

(iii) one moiety of the salary in any other case."

(2) In the same section, after clause (l), the following shall be inserted, namely:—

24 & 25 Vic., c. 67. "(m) any allowance declared by any law passed under the Indian Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council to be exempt from liability to attachment or sale in execution of a decree."

13. In section 271, between the words "or shall" and the words "break open any outer door of a dwelling-house" the words "without the special order of the Court causing the execution of the process" shall be inserted.

Amendment of section 271. Addition to section 14. To section 320 the following shall be added, namely:—

[I. L. R. 5 All. 314.] "The rules may also provide for the cases in which, the authorities to which, and the conditions on which, orders passed by the Collector or his subordinates under this Code or the rules thereunder shall be subject to appeal, and for the revision of the proceedings of appellate authorities in respect of those orders.

I. L. R. 7 Bom. 332.] "In executing a decree transferred to the Collector under this section, the Collector and his subordinates shall be subject to the control of the Court only to the extent expressly provided by this Code."

15. (1) In section 341, after clause (f), the following shall be inserted, namely:—

"or

"(g) if his discharge is ordered by the Government on the ground of his suffering from any infectious or contagious disease, or by the District Court or, in a presidency-town, the committing Court on the ground of his suffering from any serious illness."

(2) In the proviso to the same section the word "committing" shall be inserted before the word "Court."

16. (1) In section 349, for the words "is under arrest" the words "is in custody under the foregoing provisions of this Code" shall be substituted.

(2) In section 350, for the words "judgment-debtor's discharge" the word "application"; and for the words "is not entitled" the words "ought not", shall be substituted.

(3) For section 351 the following shall be substituted, namely:—

"351. (1) If the Court is satisfied that the statements in the application are substantially true, the Court may declare the judgment-debtor to be an insolvent and appoint a receiver of his property."

"(2) If the Court is not so satisfied, it shall reject the application."

(4) In section 352 the word "then" shall be repealed, and to that section the following shall be prefixed, namely:—

"When the Court has declared the judgment-debtor to be an insolvent."

"(5) To section 355 the following shall be added, namely:—

"In determining whether the insolvent should be discharged, and, if so, on what conditions, the Court shall have regard to whether he has committed any of the acts of misconduct referred to in section 359."

(6) In section 357 the figures and word "351 or" shall be omitted in each place where they occur.

(7) In section 359, for the words "Whenever, at the hearing under section 350 it is proved that the applicant has—" the words "Whenever in the course of proceedings on an application under this Chapter it is proved that the judgment-debtor has—" shall be substituted.

(8) For the second paragraph of section 360 the following shall be substituted, namely:—

"A Court so invested may entertain an application under section 344 by any person who has been arrested or imprisoned, or against whose property an order of attachment has been made, in execution of a decree for money passed by that Court."

17. (1) For sections 363 and 364 the following shall be substituted, namely:—

"363. If there are more plaintiffs than one, and any of them dies, and if the right to sue does not survive to the surviving plaintiff or plaintiffs alone, but survives to him or them

and the legal representative of the deceased plaintiff jointly, the Court shall cause the legal representative, if any, of the deceased plaintiff to be made a party, and shall cause an entry to that effect to be made on the record, and the suit shall thereupon proceed."

(2) For section 365 the following shall be substituted, namely :—

"365. In case of the death of a sole plaintiff or sole surviving plaintiff, the legal representative of the deceased may, where the right to sue survives, apply to the Court, at any time before an order for the abatement of the suit is passed, to have his name entered on the record in place of the deceased plaintiff, and thereupon the Court shall enter his name and the suit shall proceed."

(3) In section 366 the words "within the time limited by law" are hereby repealed.

(4) In the third paragraph of section 368, between the words "the plaintiff may" and the words "make an application" the words "at any time before an order for the abatement of the suit is passed" shall be inserted.

(5) In the last paragraph of section 368, the words "within the period prescribed therefor" and the words "unless he satisfies the Court that he had sufficient cause for not making the application within such period" are hereby repealed.

R. 9
S. and
386.] (6) To section 368, as amended by this section, the following shall be added, namely :—

"The legal representative of a deceased defendant may apply to have himself made a defendant in place of the deceased defendant, and the provisions of this section, so far as they are applicable, shall apply to the application and to the proceedings and consequences ensuing thereon."

R. 6
S. and
381.
VIII,
385.] Addition to section 18. To section 381 the following shall be added, namely :—

"Where a suit is dismissed under this section, the plaintiff may apply for an order to set the dismissal aside, and, if it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from furnishing the security within the time fixed, the Court shall set aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit."

"The dismissal shall not be set aside unless the plaintiff has served the defendant with notice in writing of his application."

XIV.
S. 588
Act XV
Sched.
1857.
1857.] "The provisions of this Code and of the Indian Limitation Act, 1877, with respect to an application and order under section 103 shall, so far as they can be made applicable, apply to an application for an order, and to an order, for setting aside a dismissal under this section."

19. In section 386, for the words "of a High Court" the words "or other person" shall be substituted.

Addition to section 396. 20. To section 396 the following shall be added, namely :—

"If it appears to the Court that the property, by reason of its nature or of the number of the parties interested therein or of any other circumstance, cannot conveniently be divided, the Court may, if it thinks fit, on the request of any of the parties interested and notwithstanding the dissent of any others of them, pass a decree for the sale of the property and for the distribution of the proceeds among the parties according to their respective rights in the property."

21. In section 419, after the words "Government Pleader in any Court" the words "or such other person as the Local Government may for any Court appoint in this behalf" shall be inserted.

Addition to section 432. 22. To section 432 the following shall be added, namely :—

"An appointment under this section may be made for the purpose of a specified suit or of several specified suits, or for the purpose of all such suits as it may from time to time be necessary to prosecute or defend on behalf of the Prince or Chief."

Substitution of new section for section 433. 23. For section 433 the following shall be substituted, namely :—

"433. (1) Any such Prince or Chief, and any ambassador or envoy of a Foreign State, may, with the consent of the Governor-General in Council certified by the signature of one of the Secretaries to the Government of India (but not without such consent), be sued in any competent Court."

"(2) Such consent may be given with respect to a specified suit or to several specified suits, or with respect to all suits of any specified class or classes, and may specify, in the case of any suit or class of suits, the Court in which the Prince, Chief, ambassador or envoy may be sued; but it shall not be given unless the Prince, Chief, ambassador or envoy—

(a) has instituted a suit in the Court against the person desiring to sue him, or

(b) by himself or another, trades within the local limits of the jurisdiction of the Court, or

(c) is in possession of immoveable property situate within those limits and is to be sued in relation to his possession of that property."

"(3) No such Prince, Chief, ambassador or envoy shall be arrested under this Code, and, except with the consent of the Governor-General in Council certified as aforesaid, no decree shall be executed against the property of any such Prince, Chief, ambassador or envoy."

Transposition of section 434. 24. Section 434 shall become section 651. [Act X, 1886, s. 21 (2).]

25. After section 433 the following section shall be inserted, namely :—

Insertion of new section 434.

"434. A Sovereign Prince or ruling Chief may sue, and shall be sued, in the name of his State :—

"Provided that in giving the consent referred to in the last foregoing section the Governor-General in Council may direct that any such Prince or Chief shall be sued in the name of an agent or in any other name."

26. (1) After the first paragraph of section 443 the following shall be inserted, namely :—

"Where an authority competent in this behalf has appointed or declared a guardian or guardians of the person or property, or both, of the minor, the Court shall appoint him or one of them, as the case may be, to be the guardian for the suit under this section unless it considers, for reasons to be recorded by it, that some other person ought to be so appointed."

[Act X, 1886, s. 21 (2).]

[Cf. I. L. R. 2 All. 690: 7 Bom. H. C. Rep. O. C. J. 150.]

[Cf. paragraph 4 of the Statement of Objects and Reasons of the Guardians and Wards Bill, 1886.]

(2) After section 446 the following shall be added, namely :—

"If the next friend is not a guardian appointed or declared by an authority competent in this behalf, and the application under this section is made by a guardian so appointed or declared who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor."

(3) For section 461 the following shall be substituted, namely :—

"461. (1) A next friend or guardian for the suit shall not receive any money or other moveable property under a decree or order in favour of a minor without the leave of the Court.

"(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is not thereby entitled to receive the money or other moveable property under the decree or order, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application."

(4) For section 464 the following shall be substituted, namely :—

"464. Nothing in this Chapter shall be construed to affect, or in any way derogate from, the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind."

[2 Swanst. 518, and I. L. R. 8 Cal. 32, and 7 All. 178.]

[I. L. R. 8 Cal. 272, 2 Bom. 644, & 4 All. 387.]

27. In section 539, for the words "having a direct interest" the words "having an interest" shall be substituted.

28. To section 540 the following shall be added, namely :—

"An appeal may lie under this section from an original decree passed *ex parte*."

[Cf. Act X. 1877, s. 561, & I. L. R. 8 Bom. 559 & 4 All. 218.]

29. (1) For the proviso to the first paragraph of section 561 the following shall be substituted, namely :—

"provided he has, not less than seven days before the hearing, filed the objection in the Appellate Court and left with the chief ministerial officer of the Court a notice of the filing thereof for service on the appellant or his pleader."

[I. L. R. 4 All. 430.]

(2) To the same section the following shall be added, namely :—

"The provisions of section. 5 of the Indian Limitation Act, 1877, applicable to an appeal shall apply to the objection and notice under this section."

XV of 1877.

30. In section 568, clause (b), for the word "for" where that word first occurs, the word "or" shall be substituted.

Amendment of section 568.

[I. L. R. 2 Mad. 75.]

31. To section 584 the following shall be added, namely :—

"An appeal may lie under this section from an appellate decree passed *ex parte*."

32. In section 588, clause (9), for the word "or" the word "for" shall be substituted.

33. Section 599, and in section 601 the words "within thirty days from the date of the order", are hereby repealed.

34. To section 626 the following proviso shall be added, namely :—

"and

"(c) an application made under section 624 to the Judge who delivered the judgment may, if that Judge has ordered notice to issue under proviso (a) to this section, be disposed of by his successor."

[I. L. R. Cal. 80, All. 278.]

35. (1) For the third paragraph of section 648 the following shall be substituted :—

"and the Court making an arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he shows cause to the satisfaction of the former Court why he should not be sent to the latter Court, or unless he furnishes sufficient security for his appearance before the latter Court or (where the case is one under Chapter XXXIV) for satisfying any decree that may be passed against him by that Court, in either of which cases the Court making the arrest shall release him."

(2) To section 648 the following shall be added, namely :—

"Where a person to be arrested or property to be attached under this section resides or is situated within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal or at Madras or Bombay, or of the Recorder of Rangoon, the copy of the warrant of arrest or of the order of attachment, and the probable amount of the costs of the arrest or attachment, shall be sent to the Court of Small Causes of Calcutta, Madras, Bombay or Rangoon, as the case may be, and that Court, on receipt of the copy and amount, shall proceed as if it were the District Court."

[Cf. Civil Cause Bill, 19.]

36. To section 652 the following shall be added, namely :—

Addition to section 652.

"A High Court not established under the Statute 24 and 25 Victoria, chapter 104 (*an Act for establishing High Courts of Judicature in India*) may from time to time, with the previous sanction of the Local Government, make, with respect to any matter other than procedure, any rule which any High Court so established might under section 15 of that Statute make with respect to any such matter for any part of the territories under its jurisdiction which is not included within the limits of a presidency-town. Rules so made shall be published in the same manner, and shall thereupon have the same force, as rules made and published under this section for the regulation of matters connected with procedure."

37. (1) Nos. 171, 171A and 171B of the second schedule to the Indian Limitation Act, 1877, are hereby repealed.

(2) In No. 171C of that schedule, for the words "of the same Code" the words and figures "or section 582 of the Code of Civil Procedure" shall be substituted.

[Cf. 7 A Panj. cord. XXI Civil ment XIV]

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to correct certain minor defects in the Code of Civil Procedure which have been brought to the notice of the Government of India during the four years which have elapsed since the Code was passed, and to amend that portion of the Indian Limitation Act, 1877, which relates to Chapter XXI of the Code.

The several amendments which it is proposed to make in the Code are noticed in the following remarks in the order in which they occur in the Bill:—

Section 3.—The second paragraph of section 8 of the Code, which, as the second paragraph of section 8 of Act X of 1877, was repealed by the Presidency Small Cause Courts Act, XV of 1852, was unintentionally reproduced in Act XIV of 1882. Its place has been taken by section 23 and the second schedule of the Presidency Small Cause Courts Act.

Section 4.—The Explanation which it is proposed to add to section 17 of the Code is suggested by the cases reported at I. L. R. 4 All. 423 and 5 All. 277.

Section 5.—The addition proposed by this section to be made to section 27 of the Code has been suggested by Mr. Justice Plowden of the Punjab Chief Court with reference to the remark of Pontifex J. at I. L. R. 6 Cal. 376.

Section 6.—In proposing to amend section 53 of the Code in the manner set forth in this section, the Government of India has followed the almost unanimous advice of the authorities whom it consulted in its letter Nos. 22-27, dated the 5th January, 1886.

Section 7.—In April, 1882, the Governor-General in Council published a resolution directing that postage-charges on all processes, notices and such other documents as are issued from any Court, and are required to be transmitted by post, should in future be paid by means of service postage-stamps without any additional charge being levied from the parties at whose instance the documents are issued. This resolution practically superseded the section of the Code which it is now proposed to repeal.

Section 8.—The addition to section 137 of the Code has been suggested by Bábu Brajendra Coomar Seal, the District Judge of Bankoora, on the ground of the difficulty which occurs in obtaining affidavits where the applicant under the section is a *pardánashin* lady.

Section 9.—The object of the amendments proposed to be made in section 141 of the Code is to remove the inconvenience caused to both public officers and private persons by the detention of their records in Civil Courts. The detention of the records of a village-accountant may bring his work to a standstill, and the Hon'ble Mr. Gibbon stated to the Select Committee on the Bengal Tenancy Bill that the inconvenience is quite as great in the case of private as of public records.

Section 10.—The addition to section 216 removes the doubt expressed in the case reported at I. L. R. 7 All. 234.

Section 11.—The circumstances which have suggested clause (a) of the proposed proviso to section 245 of the Code have been described in the Statement of Objects and Reasons of the Debtors Bill. If the clause becomes part of the Code, the Courts will be competent to require the property of a judgment-debtor to be proceeded against before proceedings are taken against his person.

Section 12.—As clause (h) of section 266 is at present drawn, half the salary of a public officer or railway servant in receipt of a monthly salary of twenty-one rupees may be attached. This was not the intention of the legislature.

The primary object of the additional clause (m) which it is proposed to insert in the section is to empower the Council of the Governor of Bombay to proceed with a Bill to declare and amend the law relating to *todā girās* allowances.

Section 13.—This section has been introduced at the suggestion of the Advocate General of Bombay, its object being to abolish, as regards the seizure of moveable property, the privilege conferred on debtors by the fourth resolution in Semayne's case (Smith's Leading Cases, Vol. I). At present that privilege operates mainly to enable debtors to avoid or delay payment of their just debts.

Section 14.—The necessity for the first of the proposed additions to section 320 of the Code is shown by the Full Bench judgment of the High Court for the North-Western Provinces at I. L. R. 5 All. 314. As regards the second addition, it appears to the Government of India that, if the Collector is to act effectively under section 320 and the following sections of the Code, he ought to be subject to the control of the Civil Court only to the extent expressly provided by the Code, being as to the rest subject only to the control of the higher revenue-authorities.

Section 15.—The addition to section 341 has been proposed by the High Court and Government of Madras with reference to cases which have recently occurred in Southern India. In one of these cases the debtor committed to prison was suffering from leprosy in an advanced

form, and in the other the prisoner was suffering from illness so serious as in the opinion of the medical officer to render it necessary that he should be immediately released from confinement.

Section 16.—The object of sub-sections (1) to (7) is to assimilate practice under Chapter XX of the Code to that to be prescribed by the proposed Indian Bankruptcy Act.

Sub-section (8) is designed to extend the jurisdiction of subordinate Courts in matters of insolvency. Most cases under Chapter XX are of little importance and may properly be disposed of by munsifs. Where any considerable sum is involved, the District Judge, who will have concurrent jurisdiction, can transfer the case to his own Court.

Sections 17 and 37.—The amendments proposed to be made in Chapter XXI of the Code and in the second schedule to the Indian Limitation Act, 1877, have their origin in the complaints of the hardship caused by the rules of limitation required by that Chapter and schedule to be observed in the substitution of legal representatives in the place of deceased parties to suits and appeals. With respect to these portions of the Code and Limitation Act, Mr. Rattigan, the Government Advocate of the Panjab, by whom the form of the amendments has been suggested, has recorded the following remarks:—

“Considerable hardship has been experienced in the Panjab in the working of those sections of the Civil Procedure Code which deal with the procedure to be followed in the case of the death of a plaintiff or defendant. It is of course perfectly correct and desirable that in the case of the death of one of the litigant parties, where the right to sue or be sued still survives, his legal representatives should be brought on the record, for it is clear that without such a process the suit could not validly proceed. But the hardship consists in requiring the legal representatives to apply for the above purpose within a comparatively short period after the death of the deceased plaintiff or defendant. In the Panjab it frequently happens in land-suits that fifty or a hundred persons are obliged, owing to community of interests, to sue or be sued in the one suit. Now, when such a suit comes up eventually to the Chief Court, a date for hearing is fixed which is generally not less than a year, and, at present, owing to the state of the work in the Court, is not unfrequently eighteen months from the date of filing the appeal. Within this period it often happens that one or more of the litigants is or are carried off by death from disease or violence; the representatives of the deceased, or the appellants, being ignorant agriculturists and not knowing the requirements of the law, take no action to put the representatives on the record, and thus, when the appeal finally comes on for hearing, a pleader on the opposite side takes the objection that no application has been made within the prescribed period, and, this being ascertained to be the fact, the appeal abates, and the unfortunate appellants find themselves deprived of all remedy simply in consequence of a harsh limitation law of which they had no knowledge. It is true that sections 368 and 371 allow the Court to extend the period if the plaintiff (or appellant-plaintiff) adduces sufficient cause for not making the required application within the prescribed period. But in nine cases out of ten of the kind I refer to the only cause assignable is ignorance of the requirements of the law—and this of course cannot be deemed to be ‘sufficient’ within the meaning of the section. So that the law as it stands at present works considerable hardship, and the hardship is irremediable.

“The question therefore arises, whether it is really necessary to prescribe a hard-and-fast period of limitation within which alone an application to put the legal representatives of a deceased plaintiff or defendant on the record can be entertained.

“For my own part I cannot see that there is any such necessity. If I remember rightly, the rules framed under the English Judicature Acts do not prescribe a period for such applications, and I do not see why the Indian law should do so. It would surely be sufficient to require the legal representatives of a deceased plaintiff or defendant, where the right to sue or be sued survived, to be put on the record; and to leave it to the Court to direct this to be done within such time, and upon such terms as to costs or otherwise, as it thinks fit.”

Sub-section (6) of section 15 of the Bill is intended to cure the defect noticed at I. L. R. 9 Bom. 56.

Section 18.—This section, which would restore the rule of the Code of 1859, has been proposed by Mr. Justice Straight.

Section 19.—The amendment made in section 386 of the Code by Act XII of 1879, whereby commissions to examine witnesses are required to be issued to a Court or a pleader of a High Court, has caused much inconvenience. In remote parts of the country High Court pleaders do not exist, and in few parts have Judges leisure to close their Courts and travel considerable distances for the purpose of taking the evidence of persons who cannot appear before them. Moreover, in some Provinces the Government maintains a staff of officials among whose duties is the execution of these commissions.

Section 20.—The addition which it is proposed to make to section 396 has been suggested by a gentleman of long standing at the Bombay bar. It is based on the Partition Act, 1868 (31 & 32 Vic., c. 40).

Section 21.—A Government Pleader does not exist in every Court.

Section 22.—It has been doubted whether the Government is empowered by section 432 to appoint a person generally to prosecute and defend all suits which it may from time to time be necessary to prosecute or defend on behalf of a Prince or Chief. It is obviously inconvenient that the Government should be compelled to make a special appointment in the case of each particular suit.

Sections 23 and 25.—The object of these sections is (a) to define more precisely, with reference to the definition of “Government” in section 2 of the Code, by whom consent to the institution of a suit against a Sovereign Prince, ruling Chief, ambassador or envoy may be given; (b) to make the provisions of section 433 more elastic as regards the mode of giving the consent, the

cases in which the consent may be given, and the Courts to which the consent may apply; and (c) to prescribe the name in which a Prince or Chief may sue and is to be sued. To effect this last object it is proposed that a Prince or Chief may sue and shall ordinarily be sued in the name of his State.

Section 24.—Section 434 of the Code, under which execution may be had of a decree in a suit between British subjects, is out of place in a chapter relating to Suits by Aliens and by or against Foreign and Native Rulers. The section may conveniently take the place of section 651, which was repealed in March last by Act X of 1886.

Section 26.—The amendments proposed by this section to be made in Chapter XXXI of the Code are those referred to in paragraph 4 of the Statement of Objects and Reasons of the Guardians and Wards Bill. The additions to sections 443 and 446 confer on a guardian who has been appointed, or whose title has been declared, by a Civil Court, Court of Wards or other competent authority, a preferential right to be appointed next friend or guardian for the suit. The amendment of section 461 gives effect to a suggestion by Sir Charles Turner, late Chief Justice of Madras, that, when a Court makes over property to a next friend or guardian for the suit who is not a duly constituted guardian of the property of the minor, it should be required to give such directions as, having regard to the nature of the property, may sufficiently protect it from waste and secure its proper application. Section 464, as amended, saves all local laws relating to suits by or against minors or by or against lunatics or other persons of unsound mind.

Section 27.—There are two reported cases, I. L. R. 8 Cal. 32, and I. L. R. 7 All. 178, with respect to the meaning to be assigned to the words "direct interest" in section 539. It appears that the authority for the insertion of the words "having a direct interest in the trust" is *In the matter of the Masters, Governors and Trustees of the Bedford Charity* (2 Swanst. 470). There certain Jews, some being residents of Bedford and others being members of Dutch and German Synagogues in London, sought to establish the title of Jews to the benefit of the Bedford Charity. It was contended that under Sir Samuel Romilly's Act (52 Geo. III, c. 101), on which section 539 of the Code of Civil Procedure is based, *any two or more persons* might be petitioners, and therefore the Jews of the London Synagogues, who, though *not interested*, considered it their duty to support the claims of those of their own persuasion, might be petitioners. With respect to that contention, Lord Eldon, admitting that every person possessing the character of an inhabitant of Bedford and describing himself as an object of the charity was entitled to apply to the Court, asked how he could notice the members of the London Synagogues. "Under Sir Samuel Romilly's Act," he observed, * * * "no person can petition who has not a *direct interest* in the charity. The Act indeed, authorises 'any two or more persons' to present a petition, but I conceive that those words must be understood to mean persons having an *interest*. * * * Those who are *interested* in the fund, provided Sir Samuel Romilly's Act, or the Bedford Charity Act, apply to this case, namely, persons residing in Bedford, are entitled to the summary interference of the Court, but I know not on what ground these gentlemen residing in London can appear as petitioners."

The contention which Lord Eldon overruled was that any one, though he had no interest whatever, might petition. He did, no doubt, remark that "no person can petition who has not a direct interest," but he immediately qualified that remark by adding that the words of the Act "must be understood to mean persons having an interest." The case cannot, therefore, it seems, be taken as an authority for the proposition that the interest of the petitioner must be direct. On the contrary, it may be inferred from the case that an indirect interest would have been deemed sufficient; for, when, in support of the contention that the words "any persons" comprehend persons who may not have an interest, the counsel for the petitioners pointed out that, in the instance of charities for relief of the blind and the poor, it had been the practice to receive the petition of the minister of the parish, Lord Eldon observed that "the petition of the minister of the parish is received, because the poor may be burdensome to him."

It may be doubted whether the case justified the insertion of the word "direct" in the Code, where it assumes a peculiar pointedness and must have some definite meaning assigned to it; and after consultation with the High Courts it has been decided to propose the removal of the word.

Sections 28 and 31.—It is proposed, in accordance with the advice of the great majority of the authorities consulted by the Government of India in its letter of the 5th January last, to declare *ex parte* decrees to be appealable.

Section 29.—Section 561 has been so amended as to require the objection to be filed in the Appellate Court, and notice of the filing thereof to be given to the appellant, and to admit of the objection being filed and the notice given at any time not less than seven days before the actual date of hearing; and, on the suggestion of Bábú Brajendra Coomar Seal, it applies to the objection and notice under the provisions of section 5 of the Indian Limitation Act, 1877, applicable to an appeal.

Sections 30 and 32.—The amendments proposed to be made by these sections merely correct typographical errors in sections 568 and 588 of the Code.

Section 33.—Section 599, and the portion of section 601 which it is proposed to repeal, were repealed by Act XV of 1877 and were unintentionally reproduced in the Code of 1882.

Section 34.—This section removes a doubt which has been expressed in the cases noted on the margin of the section with respect to the construction to be placed on the word "made" in section 624.

Section 35.—Sub-section (1) of this section has been suggested by the following remarks of the Hon'ble Judges of the High Court at Fort William in their Registrar's reply to the letter of the Government of India of the 5th January last :—

"I am further to request attention to another point in this section (648) which, though not referred to in your letter, seems to the Judges to call for notice. The section gives absolute power to a Court to cause the arrest through another Court of a person summoned as a witness, and so to cause him to be sent under arrest to the Court issuing the process. The Court to which the warrant is sent has no power of hearing the person arrested or of dealing with any question except the giving of security by him. It seems to the Judges that this is a power far too great to be entrusted at any rate to the subordinate Courts in the Mufassal."

Sub-section (2) has been transferred to this Bill from the Provincial Small Cause Courts Bill, and will be of general application instead of being applicable to Courts of Small Causes only. With respect to the necessity for this addition to section 648, the District Judge of the 24-Parganas writes as follows :—

"Under section 648 I would also beg to point out that a warrant for the arrest of a person residing within the limits of the original jurisdiction must be executed through the High Court. This is very inconvenient to small suitors, and, in a case which occurred in my Court only a few weeks ago, a defendant preferred abandoning all attempts to get a recusant witness into Court to undergoing the trouble and expense of having a warrant of arrest served through the Original Side of the High Court. I would suggest that the procedure prescribed by section 86 should be made applicable to section 648, and that warrants of arrest which are to be served within the original jurisdiction should be executed by the Small Cause Court."

Section 36.—This section is designed to remove a doubt as to the extent of the powers of unchartered High Courts to make rules on matters not strictly connected with procedure.

The 1st September, 1886.

C. P. ILBERT.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.



The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, SEPTEMBER 25, 1886.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 24th September, 1886, and was referred to a Select Committee:—

NO. 24 OF 1886.

A Bill to provide for the Protection of Indigenous Tribes in Burma.

WHEREAS it is expedient to provide means for protecting Karens and other indigenous tribes in Burma from the intrusion of strangers into their villages; It is hereby enacted as follows:—

Short title, commencement and local extent.

1. (1) This Act may be called the Burma Indigenous Tribes Protection Act, 1886.

(2) It shall come into force at once; and

(3) It shall extend to such local areas within the limits of Lower Burma as the Local Government may from time to time, by notification in the official Gazette, specify in this behalf.

Definition of "indigenous tribes."

2. (1) The Karens are an indigenous tribe within the meaning of this Act.

(2) With the previous sanction of the Governor-General in Council, the Local Government, by notification in the official Gazette, may from time to time declare of any other class of persons in Lower Burma that that class is or forms part of an indigenous tribe, and may at any time cancel the declaration.

(3) While a declaration under sub-section (2) is in force, it shall be conclusive proof of the matter stated therein.

3. In this Act, unless there is something repugnant in the subject or context,—
Definitions of "village" and "prescribed."

(1) "village" means any collection of ten or more houses not being either a municipality to which the British Burma Municipal Act, 1874, VII of 1874, or the Burma Municipal Act, 1884, for the time being extends, or a town, village or hamlet in which a house-tax or a cess on houses is for the time being leviable under section 5 or section 6 of the Burma District Cesses and Rural Police Act, 1880; but it does not include a village of which members of indigenous tribes are not the majority of the residents; II of 1880.

(2) "prescribed" means prescribed by rules under this Act.

4. (1) If not fewer than half of the cultivating householders of a village desire to eject or exclude from the village a resident or intending resident thereof, they may record that desire in the prescribed manner.

(2) When the cultivating householders of a village have recorded under sub-section (1) their desire to eject or exclude a resident or intending resident, the prescribed authority may, in the prescribed manner, eject or exclude him from the village:

Provided that a resident or intending resident of a village shall not be ejected or excluded therefrom, if he

- (a) is of the same indigenous tribe as the majority of the residents of the village, or
- (b) cultivates land within three miles of the village, or
- (c) has resided in the village for twelve years or upwards:

Provided also that a resident of a village who is ejected under this Act shall be entitled to compensation for any immoveable property belonging to him in the village.

5. (1) The Local Government may from time to time, with the previous sanction of the Governor-General in Council, make rules—

- (a) to define the mode in which the desire of the cultivating householders of a village to eject or exclude therefrom a resident or intending resident is to be ascertained and recorded;
- (b) to declare the authority for carrying into effect the recorded desire of the cultivating householders of a village to eject or exclude a resident or intending resident therefrom, and to prescribe the procedure to be followed by that authority in ejecting or excluding him;
- (c) to prescribe the mode in which the compensation to which an ejected resident is entitled under this Act is to be ascertained and given; and
- (d) generally to carry out the purposes of this Act.

(2) When making any rule under this Act the Local Government may direct that a breach of it shall be punished with fine which may extend to one hundred rupees, or with imprisonment which may extend to three months, or with both.

6. (1) The Local Government shall, before making rules under this Act, publish a draft of the proposed rules in such manner as may, in its opinion, be sufficient for the information of persons likely to be affected thereby.

(2) There shall be published with the draft a notice specifying a date at, or after which, the draft will be taken into consideration.

(3) The Local Government shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(4) A rule made under this Act shall not take effect until it has been published in the local official Gazette.

(5) The publication in that Gazette of a rule purporting to be made under this Act shall be conclusive proof that it has been duly made.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to provide for the ejection or exclusion in certain circumstances of strangers from village-sites occupied by Karens and other indigenous tribes of Burma.

2. It would seem that Burman, Shan or Chinese strangers occasionally settle in Karen villages and cause very great annoyance to the Karens, who, in some cases, from shyness or timidity, do not resist the intruders, whilst in others they have been goaded into acts of lawlessness. The missionaries, who know more of the Karens than any English or Burman Government officers, are very persistent in urging that power must be taken to preserve the Karens, especially the wilder Karens in secluded tracts, from intruders. Mr. Crosthwaite, when officiating as Chief Commissioner of British Burma, proposed to issue rules providing for the ejection of intruders from Karen villages; but it was found on further consideration that no rules of the kind could be enforced without legal sanction. The present Chief Commissioner, sharing Mr. Crosthwaite's views has urged on the Government the necessity for legislation, in the absence of which he fears that the Karen and similar tribes may either be driven out of their settlements or resort to lawless means of getting rid of intruders.

3. In these circumstances, the present Bill has been prepared. Though of a somewhat exceptional nature, it appears to the Government of India to be warranted by the peculiarities of the relations of these indigenous tribes and their neighbours. Further, it is supported by the analogy of the provisions of section 4 of the Garo Hills Regulation, I of 1882, which prohibit the acquisition of interests in land in those hills by strangers except under special sanction.

4. The provisions of the Bill are very simple. Section 1, sub-section (3), empowers the Chief Commissioner to apply the proposed Act to such local areas as he may by notification prescribe, while section 3 defines the term village so as to restrict the operation of the proposed law to purely rural tracts. Section 4 declares the circumstances under which a resident or intending resident may be excluded or ejected from a village. These are that the majority of the residents of the village belong to some indigenous tribe and that not less than one-half of the cultivating householders of the village desire ejection or exclusion of the resident or intending resident, who must not be of the same tribe as the majority of the residents of the village, or cultivate land within three miles of the village or have resided in the village for twelve years or upwards. The section further provides for compensation to persons who have been compelled to vacate any land or house in a village in consequence of their ejection therefrom. Under section 5, the Chief Commissioner has power to make rules with the sanction of the Governor-General in Council prescribing the mode in which the desire of the cultivating householders of a village to eject or exclude any one therefrom is to be ascertained and recorded, empowering certain persons to eject or exclude persons in pursuance of the recorded desire and on behalf of the cultivating householders, and prescribing the procedure to be followed in such cases, and the mode in which compensation under the proposed Act is to be ascertained. The section further enables the Local Government to direct in any rule that a breach of it shall be punished with fine which may extend to one hundred rupees, or with imprisonment which may extend to three months, or with both. Lastly, section 6 contains the usual formal matter as to the procedure for making and publishing rules.

The 17th September, 1886.

C. P. ILBERT.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

No. II.

THE OUDH RENT BILL.

CONTENTS.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title, extent and commencement.
2. Repeal.
3. Definitions.
4. Restrictions on exclusion of Act by agreement.

CHAPTER II.

OF CERTAIN RIGHTS AND LIABILITIES OF LANDLORDS, UNDER-PROPRIETORS AND TENANTS.

Right of occupancy.

5. Tenants having a right of occupancy.
6. Saving of power to confer right of occupancy.
7. Loss of right of occupancy.

Tenants' Right to Pattas.

8. Tenant's right to patta.
9. Patta to which tenant having a right of occupancy is entitled.
10. Patta to which tenant not having a right of occupancy is entitled.

Landlords' Right to Counterparts.

11. Landlord's right to counterpart.

Arrears of Revenue or Rent.

12. What to be deemed an arrear of revenue or rent.

Receipts.

13. Receipts for rent.

Deposit of Revenue or Rent in Court without Suit.

14. Power to pay into Court amount of revenue or rent due.
15. Procedure on making and withdrawing such payment.
16. Limitation for suits for balance of revenue or rent.

Illegal Enforcement of Payment of Rent.

17. Compensation to under-proprietor or tenant for illegal enforcement of payment.

Abatement of Rent.

18. Suit for abatement of rent by under-proprietor or tenant.

Remission of Rent.

19. Remission of rent by order of Court.

SECTIONS.

Relinquishment of Land.

20. Relinquishment of land by tenant.
21. Abandonment of holding.

Compensations for Tenants' Improvements.

22. Tenant's right to compensation for improvements.
23. Landlord's consent to tenant's improvement.
24. Reference to Deputy Commissioner when consent is refused.
25. Registration of outlay on improvements.
26. "Improvement" defined.
27. Principle on which compensation is to be estimated.
28. Modes of making compensation.
29. Improvements by the landlord.

Survey and Measurement.

30. Landlord's right to enter and measure lands.

CHAPTER III.

PAYMENT OF RENT IN KIND.

31. Division or appraisement of produce.
32. Procedure in case of dispute.

CHAPTER IV.

ENHANCEMENT AND FIXING RATES OF RENT.

Part A.—Tenants with Right of Occupancy.

33. Enhancement of rent of tenant with right of occupancy.
34. Term for re-enhancement after decision fixing rent under section 33.
35. Enhancement on re-assessment of revenue.

Part B.—Other Tenants.

36. Tenant in occupation at passing of Act: the conditions of his statutory tenancy.
37. Tenant admitted after passing of Act: the conditions of his statutory tenancy.
38. Enhancement of rent of tenant not having right of occupancy and not being a sub-tenant.
39. Enhancement by notice.
40. Time for service of notice of enhancement.
41. Contents of the notice.
42. Service of the notice.
43. Grounds on which tenant may contest his liability to enhancement.
44. Tenant's liability for enhanced rent.
45. Commencement of fresh statutory period.
46. Vacating tenant's right to compensation for improvements.
47. Rent of tenant succeeding to vacant holding.
48. Rights of the heir of a deceased tenant.
49. Rent of tenant succeeding to a holding vacated by death of previous tenant.
50. Enhancement of rent for improvements made or acquired by landlord.
51. Power for Local Government to vary the limit of enhancement of rent.

CHAPTER V.

EJECTMENT.

Tenants holding on special terms.

SECTIONS.

52. Ejectment of tenants holding on special terms.

Other Tenants.

53. Ejectment of other tenants.
 54. Ejectment by notice.
 55. Contents, service and cost of notice.
 56. Grounds on which tenant may contest liability to ejectment.
 57. Compensation for improvements, if any, to be claimed in suit contesting liability to ejectment.
 58. Determination of the claim.
 59. Tenancy to cease if notice is not contested.
 60. When assistance to eject may be given by Court.
 61. Ejectment by application.
 62. Ejectment by suit.

General.

63. Time of ejectment of tenant.
 64. Time of ejectment of thekadár.
 65. Preferment by tenants of claims for compensation for improvements in suits for ejectment.
 66. Compensation to ejected tenant for growing crops.

CHAPTER VI.

SUPPLEMENTAL PROVISIONS RESPECTING TENANCIES.

Sir Lands.

67. Sir lands.

Thekadárs, Mortgagees and Sub-tenants.

68. Thekadárs, mortgagees and sub-tenants.

Long Leases.

69. Incidents of leases for eight years or upwards.

Miscellaneous.

70. Evidence respecting change of rent or alteration of area of holding.
 71. Construction of certain expressions.

CHAPTER VII.

DISTRESS FOR ARREARS OF RENT.

72. Recovery of arrears of rent by distress.
 73. Distress not permissible in certain cases.
 74. Power of distress by whom exercisable.
 75. Distress by servants.
 76. Crops liable to distress.
 77. Demand of arrear before or at time of distress.
 78. Value of distress and service of list of distrained property on owner.
 79. Reaping and storing standing crops distrained.
 80. Application by distrainer in case of resistance.
 81. Withdrawal of distress on tender of arrear and costs.
 82. Application for sale.
 83. Form of application.
 84. Procedure on receipt of application.
 85. Suspension of sale on institution of suit.

SECTIONS.

86. Suit to contest distrainer's demand.
 87. Withdrawal of distress on execution of bond.
 88. Sale.
 89. Place and manner of sale.
 90. Postponement of sale.
 91. Payment of purchase-money.
 92. Proceeds of sale.
 93. Officers holding sales not to purchase.
 94. Illegal acts of distrainer to be reported.
 95. Recovery of expenses where sale does not take place.
 96. Second proclamation of sale when arrears are adjudged to be due.
 97. Distrainer to prove the arrear in suit to contest his demand.
 98. Compensation for vexatious distress.
 99. Suit by third party claiming property distrained.
 100. Rules applicable to suit by third party.
 101. Landlord's prior claim to distrainable produce in possession of defaulting tenant.
 102. Stranger claiming to be landlord and to have right of distress to be made a party.
 103. Suit for illegal distress.
 104. Suit for illegal act of distrainer.
 105. Suit for distress or sale falsely purporting to be under the Act.
 106. Procedure in case of resistance to distress.
 107. Punishment of offender.

CHAPTER VIII.

JURISDICTION OF THE COURTS.

Suits cognizable.

108. Suits cognizable under the Act.

Grades of Courts.

109. Grades of Courts for the purposes of the Act.
 110. Power to invest officers with powers of Assistant Collector.
 111. Deputy Commissioner to have Collector's powers.
 112. Investment of Settlement-officers with powers of Collector or Assistant Collector.
 113. Jurisdiction of Assistant Collector of the 2nd class.
 114. Jurisdiction of Assistant Collector of the 1st class.
 115. Jurisdiction of Collector.
 116. Jurisdiction of Commissioner.
 117. Jurisdiction of Judicial Commissioner.

Appeals.

118. Limitation for appeals.
 119. Restrictions on appeals.
 120. Appeals from orders of Deputy Commissioners acting as such.

Distribution of Business.

121. Power of Deputy Commissioner to distribute business.

Transfer of Suits and other Proceedings.

122. Transfer of suits and other proceedings by Commissioners and Deputy Commissioners.
 123. Transfer of suits and other proceedings by Judicial Commissioner.

SECTIONS.

Miscellaneous.

- 124. General subordination of Courts.
- 125. Suits by or against managing agents or tahsildars of estates held under direct management.
- 126. Sharer to exercise certain powers only through manager or lambardar.
- 127. Rent payable for land occupied without consent of landlord.
- 128. Place of sitting of Courts.

CHAPTER IX.

LIMITATION OF SUITS.

- 129. General limitation.
- 130. Suits for delivery of pattas or counterparts.
- 131. Suits for recovery of holdings treated as abandoned.
- 132. Suits for arrears of rent or revenue or share of profits.
- 133. Suits against agents for money, or delivery of accounts or papers.
- 134. Suits regarding distress and division or appraisement of produce.

CHAPTER X.

PROCEDURE.

- 135. Application of the Code of Civil Procedure to proceedings under this Act.
- 136. Mode of service of notices.
- 137. Contents of plaints.
- 138. Third person claiming rent to be made a party.
- 139. Summons to defendant to be for final disposal in certain suits.
- 140. Set-off in suits for arrears of rent.
- 141. Interest on arrears of rent.
- 142. Payment of money into Court by defendant.
- 143. Proceeding for balance where defendant pays less than amount claimed.
- 144. Making of local investigations by Court.

Decrees.

- 145. Time for the making of applications for execution.
- 146. Immediate execution of decree.
- 147. Decree for enhancement to state date of commencement of enhancement.
- 148. Enforcement of decree for delivery of papers or accounts.
- 149. Decrees for patta or counterpart to specify certain particulars.
- 150. Grant of patta or counterpart by Court in case of defendant's refusal.
- 151. Execution to be first made against moveable property.
- 152. Sale of under-proprietary right in execution of decree for arrears of rent.
- 153. Registration of incumbrance created by under-proprietor.
- 154. Proprietor's lien for rent payable by under-proprietor.
- 155. Right of pre-emption at execution-sale.

CHAPTER XI.

GENERAL.

- 156. Registration of statutory pattas unnecessary.
- 157. Exclusion of specified areas from certain provisions of the Act.
- 158. Power to make rules.

SCHEDULE A.—DECLARATION OF TENANT DEPOSITING REVENUE OR RENT IN COURT (SECTION 15).

SCHEDULE B.—NOTICE TO LANDLORD (SECTION 15).

SCHEDULE C.—NOTICE ON DISTRAINT (SECTION 84).

SCHEDULE D.—AREAS EXCLUDED FROM CERTAIN PROVISIONS OF ACT (SECTION 157).

No. II.

A Bill to consolidate and amend the law relating to Rent in Oudh.

WHEREAS it is expedient to consolidate and amend the law relating to rent in Oudh and to other matters connected therewith; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement. 1. (1) This Act may be [Bill, s. 1.] called the Oudh Rent Act, 1886.

(2) *Save as provided thereby, it shall extend to the territories for the time being comprised in the Province of Oudh; and*

(3) *It shall come into force on the first day [Now.] of January, 1887.*

(4) *Any power conferred by this Act on the Chief Commissioner to make rules, or to issue orders, may be exercised at any time after the passing of this Act; but a rule or order so made or issued shall not take effect until the Act comes into force.*

2. (1) The Oudh Rent Act, XIX of 1868, is [Bill, s. 2.] hereby repealed, but all notifications published and rules made under that Act shall, so far as may be, be deemed to have been published and made under this Act.

(2) *The following enactments also are hereby repealed, namely:—*

(a) *section 40 of the Oudh Civil Courts Act, XXXII of 1871;*

(b) *sections 23 and 24 of the Oudh Laws Act, XVIII of 1876; and*

(c) *section 1 of Act XIV of 1878.*

(3) *Any enactment or document referring to any enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof.*

3. In this Act, unless there is something repugnant in the subject or context,— [Bill, s. 3.]

Definitions.

(1) "Court" means any judicial officer presiding in a Court of Revenue for the disposal of matters under this Act:

(2) "suit" means a suit under this Act:

(3) "land" includes the ungathered produce of land, whether spontaneous or not, and whether growing in earth or in water, but shall not include land for the time being occupied by dwelling-houses or manufactories, or appurtenant thereto, so long as that land is not let to agricultural tenants:

*The Oudh Rent Bill.**(Chapter I.—Preliminary.—Section 4.)**(Chapter II.—Of certain Rights and Liabilities of Landlords, Under-proprietors and Tenants.—Sections 5-8.)*

(4) "revenue" means money payable to the Government on account of land:

(5) "rent" means the money, or the portion of the produce of land, payable on account of the use or occupation of land, or on account of any right in land, or on account of the use of water for irrigation:

(6) "proprietor" does not include an under-proprietor; and where there are two private rights of property, one superior and the other subordinate, in the same land, "proprietor" means the holder of the superior right only:

(7) "proprietary right" means a proprietor's right in land:

(8) "under-proprietor" means any person possessing a heritable and transferable right of property in land for which he is liable to pay rent:

(9) "under-proprietary right" means an under-proprietor's right in land:

(10) "tenant" means any person, not being an under-proprietor, who is liable to pay rent; and in the following portions of this Act, namely, sections 13, 14, 15, 17, 18, 29, 53, 54, 55, sub-sections (1) and (2), 56, 59, 60, 61, 62, 108, 126 and 138, but in no others, the expression "tenant" shall be held to include a thekadār or person to whom the collection of rents in a village or portion of a village has been leased by the landlord:

(11) "landlord" means any person to whom an under-proprietor or a tenant is liable to pay rent:

(12) "representative" means an heir or any other person taking by operation of law or by will a beneficial interest in the property of a deceased person, and includes the guardian of a minor and the legal curator of a lunatic or idiot:

(13) "prescribed" means prescribed from time to time by the Chief Commissioner by rules under this Act:

[New.] (14) "registered" means registered under any Act for the time being in force for the registration of documents:

[New.] (15) "signed" includes marked, when the person making the mark is unable to write his name: and

[New.] (16) "value", used with reference to a suit, means the amount or value of the subject-matter of the suit.

[Bill, s. 4.] 4. (1) Nothing in any contract made between a landlord and a tenant before or after the passing of this Act shall entitle a landlord to eject a tenant or enhance his rent otherwise than in accordance with the provisions of this Act.

(2) Nothing in any contract made between a landlord and a tenant after the passing of this Act shall take away or limit the right of a tenant, as provided by this Act, to make improvements and claim compensation for them.

[New.] (3) Where land not previously cultivated has been or is hereafter let by a landlord to a tenant, either after being reclaimed by or at the expense of the landlord or for the purpose of being reclaimed by the tenant, nothing in this section shall be construed to affect the conditions of any contract relating to that land until fourteen years have elapsed from the date on which the land was first brought under cultivation.

(4) Where land has remained uncultivated during a period of seven years, it shall for the purposes of the last foregoing sub-section be deemed to have not been previously cultivated.

(5) This section does not apply to tenants having a right of occupancy or to sub-tenants.

CHAPTER II.

OF CERTAIN RIGHTS AND LIABILITIES OF LANDLORDS, UNDER-PROPRIETORS AND TENANTS.

Right of Occupancy.

5. Tenants who have lost all proprietary right, whether superior or subordinate, in the lands which they hold or cultivate, shall, so long as they pay the rent payable for those lands according to the provisions of this Act, have a right of occupancy under the following rule:—

Every such tenant who, within thirty years next before the thirteenth day of February, 1856, has been, either by himself, or by himself and some other person from whom he has inherited, in possession as proprietor in a village or estate shall be deemed to possess a heritable but not a transferable right of occupancy in the land which he cultivated or held in such village or estate on the twenty-fourth day of August, 1866: provided that such land has not come into his occupation, or the occupation of the person from whom he has inherited, for the first time since the said thirteenth day of February, 1856: provided also that no such tenant shall have a right of occupancy in any village or estate in which he or any co-sharer with him possesses any under-proprietary right.

Nothing contained in the former part of this section shall affect the terms of any agreement in writing entered into between a landlord and tenant after the twenty-second day of July, 1868.

6. Nothing in the last foregoing section shall be construed to restrict the power of a landlord to confer by registered document on any persons other than those mentioned in that section a right of occupancy in the lands which they hold or cultivate.

7. If a tenant having a right of occupancy is ejected, in accordance with the provisions of section 52, from the land in which he possesses the right, he shall thereupon lose his right of occupancy in that land.

Tenants' Right to Pattas.

8. Every tenant is entitled to receive from his landlord a patta or memorandum of the terms of the tenancy, signed by the landlord or his authorized agent, and containing the following particulars, namely:—

- the quantity of land and, where the fields comprised in the patta have been numbered in a Government survey, the number of each field;
- the term for which the tenancy is to run;
- the amount of rent payable;

*The Oudh Rent Bill.**(Chapter II.—Of certain Rights and Liabilities of Landlords, Under-proprietary and Tenants.—Sections 9-16.)*

(d) the instalments in which and the times at which that amount is to be paid ;

(e) any special conditions not inconsistent with the provisions of this Act ; and

(f) if the rent is payable in kind, the proportion of produce to be delivered, and the time, manner and place of delivery.

9. Tenants having a right of occupancy are entitled to receive pattas having right of occupancy is entitled. at rates of rent determined in accordance with the provisions of Chapter IV, Part A, of this Act.

10. Tenants not having a right of occupancy are entitled to pättas for the terms and at the rates prescribed in Chapter IV, Part B, of this Act.

Landlords' Right, to Counterparts.

11. Every landlord who grants a patta is entitled to receive from the tenant a counterpart signed by or on behalf of the tenant.

Arrears of Revenue or Rent.

12. Any instalment of revenue or rent which is not paid on or before the day when it becomes due, whether under a written agreement or according to law or local usage, shall be deemed to be, for the purposes of this Act, an arrear of revenue or rent, as the case may be :

Provided that, unless the proprietor and under-proprietor have otherwise agreed in writing, the rent payable to the former by the latter shall be held to become due one month before the date fixed for the payment of the revenue on account of the village in which the land in respect of which the rent is payable is situate, and to be payable in the same number of instalments as the revenue ; and the amount of each instalment of the rent shall bear the same proportion to the whole of the rent payable for the year as the amount of each instalment of the revenue bears to the whole of the revenue payable for the year.

Receipts.

13. (1) Every receipt for rent shall specify the year or years on account of which the rent has been paid ; and any refusal to make that specification shall be held to be a withholding of a receipt.

(2) If a receipt for rent paid by an under-proprietor or tenant is withheld from him without sufficient cause, he may recover compensation from the landlord up to an amount not exceeding that of the rent paid.

Deposit of Revenue or Rent in Court without Suit.

14. (1) If a co-sharer, under-proprietor or tenant from whom any revenue or rent is due in respect of the land held or cultivated by him, tenders the full amount of that revenue or rent at the usual place of payment to the person authorised to receive it, and that person does not accept the amount and forthwith give a receipt in full therefor, the co-sharer, under-proprietor or tenant may, without any suit having been instituted against him, deposit the amount in Court to the credit of the person authorized to receive it.

(2) The deposit shall, so far as regards the co-sharer, under-proprietor or tenant, and all persons claiming through or under him, operate as a payment then made to the lambardár or landlord of the amount so deposited.

15. (1) The Court shall receive the deposit on the written application of the co-sharer, under-proprietor or tenant, or his recognized agent ; and on the applicant making a declaration in the form set forth in Schedule A to this Act, or as near thereto as circumstances will admit, the Court shall give him a receipt for the deposit.

(2) The declaration shall be verified in the manner prescribed for the verification of plaints by section 52 of the Code of Civil Procedure, and shall be signed by the person making it.

(3) Upon receiving the deposit, the Court shall issue to the person to whose credit it has been paid a notice in the form set forth in Schedule B to this Act.

(4) The notice shall be served by the proper officer without the payment of any fee.

(5) If the person to whose credit the deposit has been paid, or his recognized agent, appears and applies for it, the Court shall cause it to be paid to him.

(6) The application under sub-section (5) may be on plain paper.

16. Where a deposit has been made under the provisions of the two last foregoing sections, a suit shall not be brought against the depositor or his representative on account of any revenue or rent which accrued due in respect of the land last heretofore mentioned prior to the date of the deposit, unless the suit is instituted within six months from the date of the service of the notice mentioned in section 15.

*The Oudh Rent Bill.**(Chapter II.—Of certain Rights and Liabilities of Landlords, Under-proprietors and Tenants.—Sections 17-22.)**Illegal Enforcement of Payment of Rent.*

[Bill, s. 18.]

17. (1) If payment of rent or of any sum in excess of the rent legally claimable is illegally enforced, and any under-proprietor or tenant institutes a suit to recover compensation for the illegal enforcement of the payment, the Court may award to him compensation, not exceeding the sum of two hundred rupees, in addition to any amount for which it makes a decree in respect of the payment itself.

(2) An award of compensation under sub-section (1) shall not bar any prosecution to which the person illegally enforcing the payment may be liable under any law for the time being in force.

Abatement of Rent.

[Bill, s. 19.]

18. Save as provided by section 29, sub-section (4), a suit for an abatement of the rent of a holding shall not be brought by an under-proprietor or tenant except on the ground that the area of the holding has diminished, or on some ground specified in a lease, agreement or decree under which he holds:

Provided that, if the under-proprietor holds a sub-settlement in a revenue-paying estate, an abatement shall not be allowed to the under-proprietor unless a remission of revenue has been allowed on the same ground and by competent authority in the same estate.

Remission of Rent.

[Bill, s. 20.]

19. (1) Notwithstanding anything in the last foregoing section, a Court, when it makes a decree for an arrear of rent, may, with the previous sanction of the Deputy Commissioner, allow such remission from the rent payable by any under-proprietor or tenant as appears equitable, if the area of the land in his occupation has been materially diminished by diluvion or otherwise, or if the produce of that land has been diminished by drought, hail or other calamity beyond his control, to such an extent that the full amount of rent payable by him cannot, in the opinion of the Court, be paid.

(2) Where a remission of rent under this section causes a material diminution of the assets of the landlord in the village in which the remission is given, the revenue-authorities shall take into consideration any claim made by the landlord for a remission of revenue.

[New.]

(3) A remission shall not be allowed under this section to an under-proprietor holding a sub-settlement, or to a tenant having a right of occupancy, unless a remission of revenue has been allowed on the same ground and by competent authority in the same village.

Relinquishment of Land.

20. (1) A tenant shall continue liable for the rent of the land in his holding unless on or before the fifteenth day of March in any year he gives to the landlord or to the recognized agent of the landlord notice in writing of his desire to relinquish that land, and relinquishes it accordingly. [Bill, s. 21.]

(2) If the landlord or his recognized agent refuses to receive the notice or to sign and deliver a receipt therefor, the tenant may, before the latest date prescribed for giving the notice, apply on plain paper to the tahsildar or proper officer, and written notice of the desire of the tenant to relinquish the land shall then be served on the landlord at the expense of the tenant.

(3) A tenant cannot without the consent of his landlord relinquish a part only of his holding. [New.]

(4) Nothing in this section shall entitle a tenant holding under a registered document under section 69 to relinquish his holding otherwise than in accordance with the terms of that document. [New.]

21. (1) If a tenant abandons his holding without informing his landlord and without arranging for the cultivation of the holding, the landlord may at any time after the fifteenth day of May enter on the holding. [Bill, s. 22.]

(2) Before a landlord enters on a holding under sub-section (1), he shall file a notice in the prescribed form at the office of the tahsildar for service on the tenant stating that he has treated the holding as abandoned and is about to enter on it accordingly.

(3) When a landlord enters on a holding under sub-section (1), the tenant may institute a suit under this Act to recover possession of the holding, and the Court shall, on being satisfied that the tenant did not voluntarily abandon the holding, order recovery of possession on such terms with respect to the time of delivery of possession, the payment of arrears of rent, if any, and, if injury has been caused by the wrongful act, neglect or default of any party to the proceeding, with respect also to the payment of compensation by that party, as to the Court may seem just.

Compensation for Tenants' Improvements.

22. (1) If a tenant, or a person from whom he has inherited, has made any such improvement on his holding as is hereinafter mentioned, neither he nor his representative shall be ejected from the holding unless and until he or his representative, as the case may be, has received compensation for the improvement: [Bill, s. 23.]

Provided that compensation shall not be payable for any improvement made thirty years or more before the date on which the ejection is to take effect. [New.]

*The Oudh Rent Bill.**(Chapter II.—Of certain Rights and Liabilities of Landlords, Under-proprietors and Tenants.—Sections 23-26.)**(Chapter III.—Payment of Rent in kind.—Sections 27-31.)*

(2) An improvement made by a tenant for the benefit of his holding on land belonging to the person who is entitled to receive the rent of the holding shall for the purposes of this section be deemed to have been made on the holding of the tenant.

23. Except as provided in the next following section, a tenant shall not be entitled to claim compensation for an improvement made subsequently to the passing of this Act without the written consent of the landlord.

24. (1) If a tenant applies for the written consent of his landlord to the making of an improvement on his holding, and the landlord omits or refuses to grant it, the tenant may apply to the Deputy Commissioner for permission to make the improvement.

(2) When an application is made to the Deputy Commissioner under sub-section (1), he shall take into consideration any objections which the landlord may have to urge on either of the following grounds, namely:—

- (a) that the improvement is too costly or is unsuitable to the nature of the tenant's holding, or
- (b) that the landlord is himself prepared to make the improvement,

and shall then either grant the permission on such conditions as he considers fair and equitable or refuse the application.

25. (1) If either the landlord or the tenant desires the amount expended on an improvement executed with the permission of the Deputy Commissioner under the last foregoing section to be determined and registered, the Deputy Commissioner shall, on application made to him for the purpose, determine the amount of the outlay, and enter it in a register kept in the prescribed form.

(2) The entry in the register shall be conclusive proof of the amount of the outlay in any subsequent proceedings respecting the cost of the improvement.

26. The word "improvement," as used in this Act, means a work by which the annual letting value of land has been, and at the time of a demand for compensation continues to be, increased, and comprises—

- (a) the construction of works for the storage of water, for the supply of water for agricultural purposes, for drainage, and for protection against floods; the construction of wells; the reclamation of waste land and jungle; and other works of a like nature;
- (b) the renewal or reconstruction of any of the foregoing works, or such alterations therein or additions thereto as are not required for the maintenance thereof and increase durably their value.

Principle on which compensation is to be estimated.

27. In estimating the compensation to which a tenant is entitled for an improvement regard shall be had—

- (a) to the amount by which the value, or the produce, of the holding, or the value of that produce, is increased by the improvement;
- (b) to the condition of the improvement and the probable duration of its effects;
- (c) to the labour and capital required for the making of such an improvement;
- (d) to any reduction or remission of rent or any other advantage given by the landlord to the tenant in consideration of the improvement; and
- (e) in the case of a reclamation, or of the conversion of unirrigated into irrigated land, to the length of time during which the tenant has had the benefit of the improvement.

28. When a Court has assessed the amount of the compensation due to a tenant, it may, if both landlord and tenant desire that the compensation assessed, instead of being paid wholly in money, shall be made wholly or partly in some other way, proceed to give judgment according to the terms agreed upon between them.

29. (1) A landlord may make an improvement on the holding of a tenant not having a right of occupancy with or without the consent of the tenant.

(2) A landlord intending to make an improvement shall, if any part thereof is to be made on the holding of any such tenant, give notice of his intention to the tenant through the tahsildar.

(3) A landlord making an improvement on the holding of any such tenant shall be liable to compensate the tenant for any loss which he may cause to the tenant when making it.

(4) If the effect of the improvement is to impair the productive powers of the holding, the tenant shall, in addition to any compensation which may be awarded to him under sub-section (3), be entitled to such abatement of his rent as to the Court seems just.

(5) A landlord may not make an improvement on the holding of a tenant with a right of occupancy without the consent of the tenant.

Survey and Measurement.

30. A landlord and his agents and surveyors may at all reasonable times enter upon any land comprised in his estate for the purpose of surveying and measuring the land.

CHAPTER III.

PAYMENT OF RENT IN KIND.

31. Where rent is taken by division of the produce in kind, or by estimate or appraisement of the standing crop, or other

*The Oudh Rent Bill.**(Chapter IV.—Enhancement and fixing Rates of Rent.—Sections 32-37.)*

proceeding of a similar nature requiring the presence of both the tenant and the landlord either personally or by recognized agent, if either party neglects to be present at the proper time, or if a dispute arises between the parties regarding the division, estimate, appraisement or proceeding, either party may present an application to the Court, requesting that a proper officer be deputed to make the division, estimate or appraisement or conduct the proceeding.

[Bill, s. 31.]

32. 1 On receiving the application, the Court shall issue a written notice to the other party to attend at a time and place specified in the notice, and shall depute an officer before whom the division, estimate or appraisement shall be made or the proceeding conducted.

(2) The award of that officer in respect of the division, estimate, appraisement or proceeding shall be final, unless, within one month from the date thereof, either party institutes a suit to set it aside.

CHAPTER IV.

ENHANCEMENT AND FIXING RATES OF RENT.

Part A.—Tenants with Right of Occupancy.

[Bill, s. 32.]

33. (1) A tenant having a right of occupancy in any land shall not, in case of dispute as to the rent to be paid in respect of the land, be liable to an enhancement of the rent except in pursuance of a decree made under this Act on some one of the following grounds, namely:—

1st ground.—That the rate of rent paid by him is below the rate of rent usually paid, by the same class of tenants having a right of occupancy, for land of a similar description and with similar advantages, situate in the same village.

Rule.—In this case the Court shall enhance his rent to such amount as the plaintiff demands, not exceeding that rate.

2nd ground.—That the rate of rent paid by him is more than twelve-and-a-half per cent. below the rate of rent usually paid, by tenants of the same class not having a right of occupancy, for land of a similar description and with similar advantages, situate in the same village.

Rule.—In this case the Court shall enhance his rent to such amount as the plaintiff demands, not exceeding that rate, less twelve-and-a-half per cent.

3rd ground.—That the quantity of land held by him exceeds the quantity for which he has previously paid rent.

Rule.—In this case the Court shall decree rent for the land in excess, at rates to be fixed by the first or the second of the rules contained in this section, as the case may be.

(2) Nothing in sub-section (1) shall affect the terms of any agreement in writing entered into between a landlord and tenant after the twenty-second day of July, 1868.

34. After a decision has been passed in accord- [Bill, s. 33]

ance with the last foregoing section, a suit shall not lie for re-enhancement of the rent until the expiration of five

years from the date of the decision, except on the 3rd ground mentioned in that section, or, in the case referred to in the next following section, until, by re-assessment within the term of five years, the revenue of the land has been increased.

35. If, on a re-assessment of the revenue, the [Bill, s. 34]
Enhancement on re-rent of the tenant cannot be assessment of revenue. enhanced under section 33 by reason of the absence of the grounds therein mentioned, the landlord may institute a suit to enhance the rent to a sum not exceeding double the average amount of the revenue imposed at the re-assessment upon land of a similar description and with similar advantages held by tenants of the same class in the same village.

Part B.—Other Tenants.

36. Every tenant, not being a tenant with a [Bill, s. 35]

right of occupancy or a sub-tenant, shall be entitled to retain possession of the holding occupied by him at the time of the passing of this Act, at the rent then payable by him, for a period of seven years from the date of the last change in his rent or of the last alteration in the area of the holding, or, where no such change or alteration has taken place, from the date on which the tenant was admitted to the occupation of the holding.

37. Every such tenant who may be admit- [Bill, s. 36]

ted to the occupation of a holding after the passing of this Act shall be entitled to retain the same for a period of seven years from the date of his admission at a rent agreed upon with the landlord in accordance with the provisions of this Act; and every such tenant, in the area of whose holding or in the amount of whose rent any change is made by the landlord subsequently to the passing of this Act, shall be deemed to be admitted to the occupation of a holding within the meaning of this section.

Explanation I.—"Holding" means a parcel or parcels of land held by a tenant and forming the subject of a separate engagement. The engagement may be express or implied.

Explanation II.—This section and section 36 have effect subject to the provisions of section 4, sub-sections (3) and (4), relating to land not previously cultivated, and subject also to section 157,

*The Oudh Rent Bill.**(Chapter IV.—Enhancement and fixing Rates of Rent.—Sections 38-47.)*

excluding certain classes of land from the operation of certain sections of this Act.

38. (1) A landlord may enhance the rent of a tenant to whom section 36 or section 37 applies, either by contract in accordance with the provisions of this section or by notice as hereinafter provided.

(2) Subject to the provisions of section 49, the enhancement shall not in any case exceed one anna in the rupee, or six-and-a-quarter per cent., on the annual rent payable by the tenant at the time when the contract was made or the notice was issued:

(3) Provided that, where rent is paid in kind, the proportion of produce paid as rent by a tenant shall not be subject to increase except in accordance with an established custom of the pargana in which the land is situate.

39. If a landlord desires that the rent of a tenant to whom section 36 or section 37 applies be enhanced on the expiration of the term of seven years referred to in section 36 or section 37, as the case may be, or at any time during the currency of that term in the case mentioned in section 50, he may cause a notice to that effect to be served under section 42.

40. (1) A notice whereby enhancement is claimed on account of the expiration of the period of the tenancy shall not be served before the commencement of the last year of the tenancy.

(2) A notice of enhancement on account of an improvement made or acquired by the landlord may be served at any time during the currency of the tenancy.

41. The notice shall be written in Hindi and Urdu, and shall specify the land, the amount of the present rent and the amount of the enhancement, and require the tenant, if he refuses to pay the enhancement, to vacate the land by the fifteenth day of May next following, or to institute a suit in the proper Court to contest the notice of enhancement within thirty days from the date of the service thereof.

42. On the application of the landlord to the tahsildar or other prescribed officer the notice shall be served by the officer, on or before the fifteenth day of February at the expense of the landlord.

43. The tenant may institute a suit to contest the notice of enhancement, within thirty days from the date of the service thereof, on any of the following grounds, namely:—

- (a) that he has a right of occupancy in the land specified in the notice;
- (b) that he holds under a special agreement or decree of Court or lease under the terms of which his rent is not liable to enhancement;

(c) that the enhancement claimed is in excess of the rate authorized by law;

(d) that seven years will not have elapsed on the fifteenth day of May next following, since the date of any such change of rent or alteration of area as is under section 36 or section 37 equivalent to an admission to the occupation of a holding, or, where no such change or alteration has taken place, since the date on which he was admitted to the occupation of the holding;

(e) that the notice has not been served in the manner required by this Act;

(f) that, where the enhancement claimed is on account of an improvement, the amount claimed is excessive.

44. (1) If the tenant does not contest the notice [Bill, s. 36D.]
Tenant's liability for of enhancement and remains enhanced rent. in possession of the land after the fifteenth day of May next following the date of the service of the notice, he shall become liable for the enhanced rent.

(2) If the tenant contests the notice, and the validity thereof is maintained by the Court in whole or in part, he shall, if he remains in possession of the land after the fifteenth day of May next following the date of the service of the notice, become liable for the enhanced rent to the extent to which the Court has maintained the validity of the notice.

45. If the tenant by remaining in possession of [Bill, s. 36E.]
Commencement of the land under the last foregoing statutory period. going section becomes liable for enhanced rent, he shall be entitled to hold the land at that rent for a further period of seven years.

46. If the tenant refuses to accept the enhance- [Bill, s. 36F.]
ment claimed or decreed and vacates the holding, he shall be entitled to recover by separate suit from the landlord compensation for any improvements made by him on the holding.

47. (1) Except in the cases mentioned in [Bill, s. 36G.]
Rent of tenant suc- section 49, the rent of ceeding to vacant hold- a tenant admitted to the ing. occupation of any land the tenancy of which has determined according to the provisions of this Act shall not exceed by more than one anna in the rupee, or six-and-a-quarter per cent., the rent payable by the tenant immediately preceding him.

(2) In the case of a tenant admitted to the [New.]
occupation of a holding of which the rent has been immediately before his admission paid in kind, the rent payable shall, subject to any established custom of the pargana in which the holding is situate, be either the rent payable by the tenant immediately preceding him, or a sum which shall not exceed by more than six-and-a-quarter per cent. the equivalent of the value of the produce annually paid as rent on the average of the three years immediately preceding.

*The Oudh Rent Bill.**(Chapter IV.—Enhancement and fixing Rates of Rent.—Sections 48-51.—**(Chapter V.—Ejectment.—Sections 52-55.)*

[Bill, s. 36I.] 48. (1) The heir of a tenant who dies during the Rights of the heir of currency of the tenancy of a deceased tenant. a holding shall be entitled to retain occupation of the holding at the rent payable by the deceased for the unexpired portion of the period for which the deceased tenant might have held without liability to enhancement or ejectment, and to receive compensation under the provisions of this Act for improvements, if any, made on the holding by himself or his predecessor in interest, but shall not be entitled to a renewal of the tenancy.

[New.] (2) Subject to any rights which he may have under section 22 as a representative of the deceased, a collateral relative who did not at the date of the death of the deceased share in the cultivation of the holding shall not be deemed to be an heir of the deceased within the meaning of this section.

[Bill, s. 36H.] 49. The rent of a tenant admitted to the occupation of any land the tenancy of which has ceased in consequence of the death of a previous tenant, or of the ejectment of a thekadār or mortgagee from land of which he has taken cultivating possession during the period of his theka or mortgage, shall be such amount as may be agreed upon between him and the landlord.

[Bill, s. 36K.] 50. (1) Nothing in the foregoing sections shall bar the right of a landlord to enhancement of rent during the currency of a tenancy on the ground that the productive powers of the land held by the tenant have been increased by an improvement which has been made by, or at the expense of, the landlord, or for which compensation has been accepted from the landlord by the owner of the improvement.

(2) Where an enhancement is claimed on the ground of any such improvement, the Court, in determining the claim, shall have regard to—

- (a) the increase in the productive powers of the land caused, or likely to be caused, by the improvement;
- (b) the cost of the improvement; and
- (c) the cost of the cultivation required for the utilising of the improvement.

[Bill, s. 36J.] 51. Notwithstanding anything in the foregoing sections, the Chief Commissioner may, by notification in the local official Gazette, vary from time to time, within periods of not less than seven years, the limits of the enhancement to which tenants to whom section 36 or section 37 applies are liable in any local area specified in the notification.

CHAPTER V.

EJECTMENT.

Tenants holding on special terms.

[Bill, s. 37.] 52. (1) A tenant having a right of occupancy in any land, or holding any land under a special agreement or decree of Court, shall not be ejected from that land otherwise than in execution of a decree for ejectment:

Provided that the decree for ejectment shall not be made, unless, at the date of that decree, a decree against the tenant for an arrear of rent in respect of the land has remained unsatisfied for fifteen days or upwards.

(2) A decree for the ejectment of a tenant holding under a special agreement or decree of Court may be made on such grounds as would justify ejectment under the agreement or decree.

Other Tenants.

53. A tenant not having a right of occupancy, and not holding under a special agreement or decree of Court, may be ejected by notice, application or suit under the following sections of this Chapter.

54. If a landlord desires to eject any such tenant on the expiration of his tenancy, he may cause a notice of ejectment to be served on the tenant under the next following section.

55. (1) The notice shall be written in Hindi and in Urdu; it shall be signed by the landlord or by an agent authorised by him in that behalf; it shall specify the land from which the tenant is to be ejected; it shall, if a court-fee is payable in respect thereof under this section, contain a certificate by the patwārī as to the annual rent payable for the holding to which the notice relates; and it shall inform the tenant that he must either (a), if he means to dispute the ejectment, institute a suit for that purpose within thirty days from the date of the service of the notice, or (b) vacate the land on or before the fifteenth day of May next following.

(2) On the application of the landlord to the tahsildār or other prescribed officer, the notice shall, if the proper court-fee (where a court-fee is payable under this section) has been paid in respect thereof, be served on the tenant by the officer on or before the fifteenth day of November at the expense of the landlord.

(3) If the tenant on whom the notice is to be served is a tenant to whom section 36 or section 37 applies, there shall, except as provided by this sub-section and sub-section (4) and by section 69, be payable in respect of the notice a court-fee equal in value to half the annual rent payable for the holding of the tenant, or, in the case of a tenant paying rent in kind, a court-fee equal to half the value of the produce annually paid as rent on the average of the three years immediately preceding:

Provided that the court-fee shall not in any case exceed twenty-five rupees.

(4) A court-fee shall not be payable under sub-section (3) in respect of a notice on a person to whom section 48 applies.

(5) Stamps representing the court-fee shall be affixed on the notice before the notice and the application for the service thereof are presented to the tahsildār or other prescribed officer.

*The Oudh Rent Bill.**(Chapter V.—Ejectment.—Sections 56-63.)*

[New.] (6) *The court fee paid by a landlord under this section shall not in any circumstances be adjudged to be payable as costs or otherwise by the tenant.*

[Bill, s. 40.]

56. (1) A tenant on whom a notice has been served under the last foregoing section may institute a suit to contest his liability to be ejected from the land specified therein on any of the following grounds, namely:—

(a) that he has a right of occupancy in the land;

(b) that he holds under a special agreement or decree of Court or unexpired lease under the terms of which he is not liable to be ejected from the land;

[New.]

(c) if he is a tenant to whom section 55, sub-section (3) applies, that the notice was insufficiently stamped;

(d) if he is a tenant to whom section 36 or section 37 applies, that seven years will not have elapsed on the fifteenth day of May next following, since the date of any such change of rent or alteration of area as is under section 36 or section 37, as the case may be, equivalent to an admission to the occupation of a holding, or, where no such change or alteration has taken place, since the date on which he was admitted to the occupation of the holding;

(e) if he is a tenant to whom section 53 applies, that notice of ejectment has not been served upon him in the manner required by this Act.

[s. 40.]

(2) A thekadār shall not be entitled to contest a notice of ejectment on any ground other than that he holds a lease under the terms of which he is not liable to ejectment.

[s. 40A.]

57. If the tenant has any claim for compensation for improvements on the holding, he shall file with his plaint a statement of the claim and of the grounds on which it is based.

Compensation for improvements, if any, to be claimed in suit contesting liability to ejectment.

[s. 40B.]

58. If the Court dismisses the suit in whole or in part, it shall determine the amount of the compensation, if any, due for improvements, and shall declare ejectment from the whole or part of the land, as the case may be, to be conditional on payment of that amount into Court.

Determination of the claim.

[s. 41.]

59. If the tenant on whom notice of ejectment has been served fails, within thirty days from the date of the service, to institute a suit to contest his liability to be ejected, his tenancy of the land in respect of which the notice has been served shall cease on the fifteenth of May next following, unless, after the service, the landlord has authorised him in writing to continue to occupy the land.

Tenancy to cease if notice is not contested.

60. (1) If the landlord requires assistance to eject a tenant on whom he alleges a notice to have been served under section 55, he may apply for that assistance to the Court which would have had jurisdiction with respect to a suit by the tenant to contest his liability to be ejected under the notice, and that Court shall order the ejectment of the tenant if it is satisfied—

When assistance to eject may be given by Court.

(a) that a notice of ejectment was duly served on the tenant;

(b) that the tenant has not brought a suit to contest the notice, or that, if a suit for that purpose has been brought, it has been determined adversely to the tenant;

(c) that the tenant has not been authorised by the landlord in writing to continue to occupy the land.

(2) Nothing done by the Court under sub-section (1) shall affect the right of the tenant to institute a suit against his landlord on account of illegal ejectment and to recover compensation therefor.

61. (1) If a landlord desires to eject a tenant to whom section 53 applies and against whom a decree for an arrear of rent has been passed and remains unsatisfied, he may, after the first day of April of the year in which that arrear accrued, apply to the Deputy Commissioner to eject the tenant.

Ejectment by application.

(2) The Deputy Commissioner shall, on receiving the application, cause a notice to be served on the tenant, stating the amount due under the decree, and informing him that if he does not pay that amount into Court within fifteen days from the receipt of the notice he will be ejected from his holding.

(3) If the amount is not so paid, the Deputy Commissioner shall, unless good cause is shown to the contrary, eject the tenant.

62. (1) A tenant to whom section 53 applies shall be liable to ejectment by suit during the currency of his tenancy on any of the following grounds, namely:—

(a) that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of his tenancy;

(b) that at the time of the institution of the suit the entire holding has been sub-let; [New.]

(c) where the rent is payable in kind, that his cultivation has diminished to a point which by the custom of the locality involves the forfeiture of the holding;

(d) where the tenant holds, under an unexpired lease, laid to which section 4, sub-sections (3) and (4), applies, then on any ground which would justify ejectment under the lease.

(2) The tenant shall continue liable for the rent of the land until the decree is executed.

General.

63. Except in pursuance of an order under section 21, sub-section (3), a tenant shall not in any case, whether in execution of a

Time of ejectment of tenant.

The Oudh Rent Bill.

(Chapter VI.—Supplemental Provisions respecting Tenancies.—Sections 64-71.)
(Chapter VII.—Distress for arrears of Rent.—Sections 72-73.)

decree or otherwise, be ejected from the land in his occupation, except between the first day of April and the thirtieth day of June in any year after the passing of this Act.

[Bill, s. 45.] 64. A *thekadár* liable to be ejected under the provisions of this Act may be ejected at any time during his tenancy.

[New.] 65. In any suit for ejectment the defendant may file any claim for compensation for improvements which he may have against the plaintiff, and if the Court finds the grounds on which the suit is brought to be valid, it shall determine the amount of compensation, if any, due from the plaintiff to the defendant, and shall pass a decree of ejectment conditional on the payment into Court of that amount.

[Bill, s. 46.] 66. A tenant ejected in accordance with the provisions of this Act shall be entitled to receive from the landlord the value of any growing crops or other ungathered products of the earth belonging to the tenant and being on the land at the time of his ejectment:

Provided that, if the land has been sown or planted by the tenant after service on him of a notice under section 55, he shall not be so entitled, unless, after that service, the landlord has authorized him in writing to continue to occupy the land.

CHAPTER VI.

SUPPLEMENTAL PROVISIONS RESPECTING TENANCIES.

Sir Lands.

[Bill, s. 46A.] 67. (1) The rights conferred upon tenants by sections 24, 36, 37, 38, 39, 45, 46, 47 and 48 shall not accrue to cultivators of any of the following lands, namely:—

- (a) land which for the seven years immediately preceding the passing of this Act has been continuously dealt with as *sir* in the distribution of proprietary or under-proprietary profits and charges;
 - (b) land which for the seven years immediately preceding the passing of this Act has been continuously cultivated by the proprietor or under-proprietor himself or by his servants or by hired labour.
- (2) Land which was recorded as *sir* at settlement and has been continuously so recorded since shall, until the contrary is proved, be presumed to be land of the class mentioned in clause (a) of subsection (1).

Thekadárs, Mortgagees and Sub-tenants.

[Bill, s. 46 B.] 68. (1) A person holding land as a *thekadár*, *thekadárs*, *mortgagees* and *sub-tenants*. mortgagee or sub-tenant shall not, while so holding, acquire any of the rights enumerated in the last foregoing section in any of the land comprised in his *theka*, mortgage or sub-tenancy.

(2) A person having those rights in land does not lose them by subsequently taking a *theka* or mortgage in which his holding is comprised.

Long Leases.

69. (1) When a holding has been let by registered document for a term of eight years or upwards at a rent determined thereby for the whole of the term in accordance with the provisions of this Act to a tenant to whom section 36 or section 37 applies, the landlord shall, on the expiration of the term, be entitled to enhance the rent of the holding in accordance with the provisions of Chapter IV, Part B, and not otherwise, and shall also be entitled to eject the tenant by notice under section 55 without payment of a court-fee under that section:

Provided that any change in the rent or alteration in the area of the holding by the landlord during the term shall be a bar to enhancement and ejectment for seven years from the date of that change or alteration.

(2) In addition to the grounds mentioned in clauses (a), (b) and (c) of section 62, subsection (1), a tenant to whom this section applies shall be liable to ejectment by suit during the currency of his tenancy on any ground which would justify ejectment under the registered document under which he holds.

Miscellaneous.

70. Where a tenant has received a *patta*, a statement that since the date of the *patta* his rent has been changed, or the area of his holding altered, by the landlord, shall not be admissible in evidence unless the change or alteration is recorded in an entry on the *patta* signed by or on behalf of the landlord, and in an entry on the counterpart signed by or on behalf of the tenant, or in a new *patta* and counterpart.

71. The expression "special agreement" or Construction of certain expressions. "decree of Court", where it is used in this Act to signify the tenure on which land is held by a tenant, is to be construed as referring to an agreement or decree made or passed before the passing of this Act.

CHAPTER VII.

DISTRESS FOR ARREARS OF RENT.

72. When an arrear of rent is due from any tenant, the landlord may, subject to the provisions of this Chapter, distrain the produce of the land in respect of which the arrear is due:

Recovery of arrears of rent by distress. Provided that, when a tenant has given security for the payment of his rent, the produce of the land in respect of which the rent is payable shall not be liable to distress so long as the security is in force.

73. Distress shall not be made for the recovery of— Distress not permissible in certain cases.

- (a) any sum in excess of the rent payable in the last preceding year for the land in respect of which the arrear is due, unless the tenant has agreed in writing to pay that excess or unless he has been declared by decree to be liable therefor, or

*The Oudh Rent Bill.**(Chapter VII.—Distress for Arrears of Rent.—Sections 74-83.)*

(b) any arrear which has been due for a longer period than one year.

49.] 74. The power of distress vested by section 72 in landlords may be exercised by managers under the Court of Wards, managing agents and tahsildars of estates held under direct management, and other persons lawfully entrusted with the charge of land, and also by the agents employed by landlords or any such persons as aforesaid in the collection of rent, if expressly authorised by power-of-attorney to distrain:

Provided that, if any such agent, purporting to act in the exercise of that power, commits an act which, under the provisions of this Chapter, is illegal, the person employing him shall be liable, as well as the agent, to be sued for compensation for any injury caused by the act.

50.] 75. Any person empowered to distrain property under section 72 or section 74 may employ a servant or other person to make the distress, but in every such case he shall give to the servant or person a written authority in that behalf, and the distress shall be made in the name and on the responsibility of the person giving the authority.

51.] 76. (1) Standing crops and other ungathered crops liable to distress. products of the earth, and crops or other products when reaped or gathered and deposited in any threshing-floor or place for treading out grain or the like, whether in the field or within a homestead, may be distrained by persons invested with powers of distress under this Act.

(2) But no such crops or products, other than the produce of the land in respect of which an arrear of rent is due, or of land held under the same engagement as the land in respect of which the arrear is due, and no grain or other produce after it has been stored by the cultivator, and no other property whatsoever, shall be liable to distress under this Act.

52.] 77. (1) Before or at the time when any distress is made under this Act, the demand of arrear before or at time of distress. distainer shall cause the defaulter to be served with a written demand for the amount of the arrear, together with an account exhibiting the grounds on which the demand is made.

(2) The demand and account shall, if practicable, be served personally on the defaulter, but, if he cannot be found, they shall be affixed at his usual place of residence, and shall thereupon be deemed to be duly served upon him.

53.] 78. Unless the amount of the demand is immediately paid or tendered, the distainer may distrain property as aforesaid of value as nearly as may be equal to the amount of the arrear with the costs of the distress; and, when he has made the distress, he shall prepare a list or description of the pro-

perty distrained and deliver a copy thereof to the owner, or if the owner is absent, affix it at his usual place of residence.

79. (1) Standing crops and other ungathered [Bill, s. 54.] Reaping and storing products of the earth may, standing crops notwithstanding the distress, be reaped or gathered by the tenant, and may be stored in such granaries or other places as are commonly used by him for the purpose.

(2) If the tenant neglects to do so, the distrainer may cause the crops or products to be reaped or gathered, and in that case shall store them either in such granaries or other places as aforesaid, or in some other convenient place in the neighbourhood.

(3) In either case the distrained property shall be placed in the charge of some proper person appointed by the distrainer for the purpose.

(4) If the crops or products do not, from their nature, admit of being stored, the distress shall be made (if at all) at least twenty days before the time when the crops or products or any part thereof would ordinarily be fit for cutting or gathering.

80. If a distrainer is opposed or apprehends [Bill, s. 55.] resistance, and desires to obtain the assistance of a public officer, he may apply to the Court, and the Court may, if it thinks necessary, depute an officer to assist the distrainer in making the distress.

81. If at any time after property has been [Bill, s. 56.] distrained as aforesaid, and before the sale thereof as hereinafter provided, the owner tenders payment of the arrear demanded and of the costs of the distress, the distrainer shall receive the payment and give a receipt therefor and forthwith withdraw the distress.

82. Within five days from the time of storing [Bill, s. 57.] any distrained crops or products, or if the crops or products do not from their nature admit of being stored, within five days from the time of making the distress, the distrainer shall apply for the sale thereof to the proper officer authorized to sell property in satisfaction of decrees of the Court within whose jurisdiction the distrained property is situate.

83. (1) The application shall be in writing; it [Bill, s. 58.] shall contain a list or description of the property distrained, and it shall state the name of the defaulter, his place of residence, the amount due and the place in which the distrained property is deposited.

(2) Together with the application, the distrainer shall deliver to the proper officer the sum payable for the service of a notice upon the defaulter as provided in the next following section.

The Oudh Rent Bill.

(Chapter VII.—Distress for Arrears of Rent.—Sections 84-92.)

[Bill, s. 59.]

84. (1) Immediately on receipt of the application, the proper officer shall send a copy of it to the Court, and shall serve a notice in the form contained in Schedule C to this Act, or to the like effect, on the person whose property has been distrained, requiring him either to pay the amount demanded, or within fifteen days from the receipt of the notice to institute a suit to contest the demand.

(2) The officer shall at the same time send to the Court, for the purpose of being put up at the court-house, a proclamation fixing a day for the sale of the distrained property, not less than twenty days from the date of the proclamation, and shall deliver a copy of the proclamation to the peon charged with the service of the notice, to be put up by him in the place where the distrained property is deposited.

(3) The proclamation shall contain a description of the property, and shall specify the demand for which it is to be sold, and the place where the sale is to be held.

[Bill, s. 60.]

85. (1) If a suit is instituted in pursuance of the notice mentioned in the last foregoing section, the Court shall send to the proper officer, or, if so requested by the owner of the distrained property, shall deliver to him, a certificate of the institution of the suit.

(2) On the certificate being received by, or presented to, the proper officer, he shall suspend proceedings in regard to the sale:

Provided that, if in his opinion the property distrained is such that delay will cause damage thereto, he may direct its immediate sale.

[Bill, s. 61.]

86. (1) Any person whose property has been distrained as aforesaid may institute a suit to contest the distrainer's demand at any time before the expiration of the fifteen days mentioned in section 84 sub-section (1).

(2) When any such suit is instituted, the Court shall proceed in the manner directed in section 85.

(3) If application for the sale of the property is afterwards made to the proper officer, he shall send a copy of the application to the Court, and suspend further proceedings pending the decision of the case.

[Bill, s. 62.]

87. (1) The person whose property has been distrained may, at the time of instituting any such suit as aforesaid, or at any subsequent period, execute a bond with one or more surety or sureties, for an amount not less than double the value of the property distrained, binding himself to pay whatever sum may be adjudged to be due from him, with costs of suit.

(2) When a bond has been executed under sub-section (1), the Court shall give to the owner of the property a certificate to that effect, or, if he so requests, shall serve the distrainer with notice of the execution of the bond.

(3) Upon the certificate being presented to the distrainer by the owner of the property, or upon the notice being served on the distrainer by order of the Court, as the case may be, the property shall be released from distress.

88. On the expiration of the period fixed in the proclamation of sale, if the institution of a suit to contest the demand of the distrainer has not been certified to the proper officer in the manner hereinbefore provided, he shall, unless that demand, with such costs of the distress as are allowed by him, is discharged in full, proceed, with the sanction of the Court, to sell the property, or such part thereof as may be necessary.

89. (1) The sale shall be held at the place where the distrained property is deposited, or at the nearest *ganj, bazar* or other place of public resort, if the proper officer thinks that it is likely to sell there to better advantage.

(2) The property shall be sold by public auction in one or more lots as the officer holding the sale thinks advisable, and if the demand, with the costs of distress and sale, is satisfied by the sale of a portion of the property, the distress shall be immediately withdrawn with respect to the remainder.

90. If, on the property being put up for sale, a price which the officer holding the sale thinks fair is not offered, and if the owner of the property or his recognized agent applies to have the sale postponed until the next day or (if a market is held at the place of sale) until the next market-day, the sale shall be postponed until that day, and shall be then completed at whatever price may be offered.

91. (1) The price of every lot shall be paid in ready money at the time of sale, or as soon thereafter as the officer holding the sale thinks fit, and in default of payment the property shall be put up again and re-sold.

(2) When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate stating the property purchased by him and the price paid therefor.

92. (1) The officer holding the sale shall deduct from the proceeds one anna for every rupee and fraction of a rupee on account of the expenses attending the sale.

*The Oudh Rent Bill.**(Chapter VII.—Distress for Arrears of Rent.—Sections 93-99.)*

(2) He shall then pay to the distrainer the expenses incurred by him on account of the distress and of the issue of the notice and proclamation of sale prescribed in section 84 to such amount as, after examination of the statement of expenses furnished by the distrainer, the officer thinks proper to allow.

(3) The remainder shall be applied to the discharge of the arrear for which the distress was made, and the surplus (if any) shall be delivered to the person whose property has been sold.

[Bill, s. 68.]

93. Officers holding sales of property under this Act, and all persons employed by, or subordinate to, those officers, are forbidden to purchase, either directly or indirectly, property sold by those officers.

[Bill, s. 69.]

94. (1) The officer mentioned in section 82 shall bring to the notice of the Court any illegal act which may come to his knowledge as having been committed by any person in making a distress under this Act.

(2) If in any case, on proceeding to hold a sale under this Act, that officer finds that the owner has not received due notice of the distress and intended sale, he shall postpone the sale and report the case to the Court, and the Court shall direct the issue of another notice and proclamation of sale under section 84, or make such other order as it thinks proper.

[Bill, s. 70.]

95. (1) When that officer has gone to any place for the purpose of holding a sale, and a sale does not take place either for the reason stated in section 94 or because the distrainer's demand has been previously satisfied, a charge of one anna for every rupee of the value of the distrained property, as estimated by the officer, shall be leviable by him on account of the expenses of the intended sale, unless the distrainer's demand has been satisfied before the day fixed for the sale and notice of its having been satisfied has been given by him to the officer.

(2) If the distrainer's demand is not satisfied until the day fixed for the sale, the charge shall be paid by the owner of the property, and may be recovered by sale of such portion of the property as may be necessary.

(3) In every other case the charge shall be paid by the distrainer, and may be recovered under the warrant of the Court by attachment and sale of his property.

(4) The charge leviable under this section shall not exceed ten rupees in any case.

96. (1) When a suit has been instituted to con- [Bill, s. 71.]

Second proclamation test a distrainer's demand, of sale when arrears are and the property has not adjudged to be due. been released on security, if the demand or any portion thereof is adjudged to be due, the Court shall issue an order to the proper officer authorizing the sale of the property.

(2) On the application of the distrainer (which shall be made within five days from the receipt of the order by the officer), the officer shall publish a second proclamation in the manner prescribed in section 84, fixing another day for the sale of the distrained property, not being less than five or more than ten days from the date of the proclamation, and, unless the amount adjudged to be due with costs of distress is paid before that day, shall proceed to sell the property in the manner hereinbefore provided.

97. (1) In all suits instituted to contest a dis- [Bill, s. 72.]

Distrainer to prove the arrear in suit to contest his demand. trainer's demand, the defendant must prove the arrear in the same manner as if he had himself brought a suit for the amount of the arrear.

(2) If the demand or any part thereof is found to be due, the Court shall make in favour of the distrainer a decree for the amount so found.

(3) That amount may be recovered, if the distrained property has not been released on security, by sale of the distrained property as provided in section 96, and, if any balance remains due after the sale, by execution of the decree against the person and any other property of the defaulter, or, if the distrained property has been released on security, by execution of the decree against the person and property of the defaulter, and if his surety has been made a party to the suit, against the person and property of the surety.

98. If the distress is adjudged to be vexatious [Bill, s. 73.]

Compensation for or vexatious distress. groundless, the Court, besides directing the release of the distrained property, may award such compensation to the plaintiff as it thinks fit, not exceeding twice the value of the property distrained.

99. If any person claims, as his own, property [Bill, s. 74.]

Suit by third party claiming property distrained. which has been distrained for arrears of rent alleged to be due from any other person, the claimant may institute a suit against the distrainer and that other person to try the right to the property, in the same manner, and under the same rules as to the time of instituting the suit and as to the consequent postponement of sale, as a person whose property has been distrained for an arrear of rent alleged to be due from him may institute a suit to contest the demand.

*The Oudh Rent Bill.**(Chapter VII.—Distress for Arrears of Rent.—Sections 100-107.)*

[Bill, s. 75.]

100. (1) When any such suit is instituted, the property may be released upon security for its value being given to the satisfaction of the Court.

Rules applicable to suit by third party.

(2) If the claim is dismissed, the Court shall make an order in favour of the distrainer for the sale of the property, or the recovery of its value, as the case may be.

(3) If the claim is upheld, the Court shall order the release of the distrained property, and may award such compensation to the plaintiff as it thinks fit, not exceeding twice the value of the property distrained.

[Bill, s. 76.]

101. No claim to any produce liable to distress under this Act and found at the time of the distress in the possession of a defaulting tenant, whether the claim be in respect of a previous sale, mortgage or otherwise, shall bar the landlord's prior claim, nor shall any attachment in execution of a decree of any Civil Court prevail against the prior claim of the landlord.

Landlord's prior claim to distrainable produce in possession of defaulting tenant.

[Bill, s. 77.]

102. When property has been distrained for an arrear of rent, and a suit has been instituted to contest the demand, and the right to distrain for that arrear is claimed by or on behalf of any person other than the distrainer, on the ground of that other person being actually and in good faith in the receipt and enjoyment of the rent of the land, that other person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by him before and up to the commencement of the suit shall be inquired into, and the suit shall be decided according to the result of the inquiry:

Stranger claiming to be landlord and to have right of distress to be made a party.

Provided that the decision of the Court shall not affect the right of any person having a title to the rent of land to establish that title in a Court of competent jurisdiction, by suit instituted within one year from the date of the decision.

[Bill, s. 78.]

103. Any person whose property has been distrained for the recovery of a demand not justly due, or of a demand due or alleged to be due from some other person, and who is prevented by any sufficient cause from bringing a suit to contest the demand or try the right to the property, as the case may be, within the period allowed by sections 84 and 99, and whose property is in consequence brought to sale, may institute a suit to recover compensation for any injury which he has sustained from the distress and sale.

Suit for illegal distress.

Suit for illegal act of distrainer.

104. In any of the following cases, namely:— [Bill, s. 79.]

- (a) if any person empowered to distrain property, or employed for the purpose under a written authority by a person so empowered, distrains or sells, otherwise than in accordance with the provisions of this Act, any property for the recovery of an arrear of rent alleged to be due, or
- (b) if any distrained property is lost, damaged or destroyed, by reason of the distrainer not having taken proper precaution for the due keeping and preservation thereof, or
- (c) if the distress is not immediately withdrawn when any provision of this Act requires its withdrawal,

the owner of the property may institute a suit to recover compensation for any injury which he has thereby sustained.

105. (1) If any person not empowered by this Act to distrain or sell, or not duly authorized for that purpose by a person so empowered, purports to distrain or sell any property under this Act, the owner of the property may institute a suit to recover compensation from the person so distraining or selling for any injury which the plaintiff has sustained from the distress or sale. [Bill, s. 80.]

(2) The institution of a suit under sub-section (1) shall not affect the defendant's liability to be prosecuted under any law for the time being in force.

106. (1) If any person resists a distress of property duly made under this Act, or forcibly or clandestinely removes any distrained property, the Court, upon complaint being made within ten days from the date of the resistance or removal, shall cause the person accused to be arrested and brought before the Court with all convenient speed, and the Court shall proceed forthwith to try the case. [Bill, s. 81.]

(2) If the case cannot be at once heard and determined, the Court may, if it thinks fit, require the person arrested to give security for his appearance whenever he may be required to appear, and, in default of the security being given, may commit him to the civil jail until the case is tried.

107. If the resistance to the distress or the removal of the distrained property is proved, the Court may order the offender to pay a fine not exceeding one hundred rupees, together with all costs and expenses incurred in the case or in making the distress, and, in default of payment, may order him to be imprisoned in the civil jail until payment is made: [Bill, s. 82.]

Provided that the offender shall not be imprisoned under this section for a longer term than six months.

Punishment of offender.

*The Oudh Rent Bill.**(Chapter VIII.—Jurisdiction of the Courts.—Sections 108-110.)*

CHAPTER VIII.

JURISDICTION OF THE COURTS.

Suits cognizable.

[Bill, s. 83.]

108. Courts other than Courts of Revenue shall not take cognizance of the following descriptions of suits, and those suits shall be heard and determined in Courts of Revenue in the manner provided in this Act, and not otherwise:—

A.—Suits by a Landlord—

- (1) for the delivery by a tenant of the counterpart of a *patta*;
- (2) for arrears of rent, or, where rent is payable in kind, for the money-equivalent of rent;
- (3) for the enhancement of the rent of a tenant;
- (4) for the ejectment of a tenant;
- (5) by landlords against *patwāris* or agents employed by landlords in the management of land or the collection of revenue or rent, or against the sureties of those *patwāris* or agents for money received or accounts kept by the *patwāris* or agents in the course of their employment as aforesaid, or for papers in their possession, or for the rendering and settlement of accounts;

B.—Suits by an Under-Proprietor or a Tenant—

- (6) for establishing a right of occupancy;
- (7) for the delivery by a landlord of a *patta*;
- (8) for contesting a notice of enhancement or ejectment;
- (9) for compensation—
 - (a) on account of illegal enforcement of payment of rent, or of any sum in excess of rent due, or
 - (b) on account of the withholding of a receipt for a payment of rent, or
 - (c) on account of illegal ejectment, or
 - (d) on account of loss caused by the making of an improvement under section 29 sub-section (3); or
 - (e) on account of the value of standing crops under section 66;
- (10) for the recovery of the occupancy of any land which has been treated by a landlord as abandoned or from which an under-proprietor or tenant has been illegally ejected by the landlord;
- (11) for contesting the exercise of the power of dstraint conferred on landlords and others by this Act, or any acts purporting to be done in exercise of that power, or for compensation for illegal dstraint;

(12) for abatement of rent in accordance with the provisions of section 18 or section 29 sub-section (4);

(13) for the recovery of compensation for improvements in accordance with the provisions of section 22;

C.—Suits regarding the Division or Appraisal of Produce.—

(14) to set aside an award in respect of a division, estimate, appraisal or proceeding under section 32;

D.—Suits by and against Lambardārs, Co-sharers and Muafidārs—

- (15) by a sharer against a lambardār or co-sharer for a share of the profits of an estate or any part thereof, or for the rendering and settlement of accounts in respect of those profits;
- (16) by a lambardār, or by a pattidār who is entitled to collect the rents of the patti, for arrears of revenue or rent payable through him by the co-sharers whom he represents, or by a lambardār for village expenses and other dues for which the co-sharers may be responsible to him or against a joint lambardār for compensation for revenue or rent paid by the lambardār on account of the joint lambardār;
- (17) by co-sharers against lambardārs, or by proprietors or lessees against muafidārs or assignees of revenue, for compensation on account of exaction in excess of revenue or rent, or on account of the withholding of a receipt for a payment of revenue or rent;
- (18) by muafidārs or assignees of revenue for arrears of revenue.

Grades of Courts.

109. For the purposes of [Bill, s. 84.] the purposes of the this Act, there shall be five grades of Courts of Revenue, namely:—

- (1) the Assistant Collector of the second class;
- (2) the Assistant Collector of the first class;
- (3) the Collector;
- (4) the Commissioner;
- (5) the Judicial Commissioner.

110. (1) The Chief Commissioner may from time to time confer upon any officer the powers of the powers of an Assistant Collector. [Bill, s. 85.]
 Assistant Collector. Collector of the first or of the second class under this Act, and may at any time withdraw those powers.

(2) In conferring powers under this section the Chief Commissioner may empower persons specially by name or classes of officials generally by their official titles.

*The Oudh Rent Bill.**(Chapter VIII.—Jurisdiction of the Courts.—Sections 111-122.)*

[Bill, s. 86.]

Deputy Commissioner to have Collector's powers. this Act.

111. The Deputy Commissioner shall exercise the powers of a Collector under this Act.

[Bill, s. 87.]

Investment of Settlement-officers with powers of Collector or Assistant Collector.

112. The Chief Commissioner may invest any officer employed in making or revising settlements of revenue with all or any of the powers of a Collector or Assistant Collector under this Act.

[Bill, s. 88.]

Jurisdiction of Assistant Collector of the 2nd class.

113. An Assistant Collector of the second class may try and determine suits of the descriptions mentioned in clauses (1), (2), (7), (12), (15), (16), (17) and (18) of section 108, of which the value does not exceed one hundred rupees.

[Bill, s. 90.]

Jurisdiction of Assistant Collector of the 1st class.

114. An Assistant Collector of the first class may try and determine suits of every description of which the value does not exceed five thousand rupees.

[Bill, s. 91.]

Jurisdiction of Collector.

115. (1) The Collector may try and determine suits of every description without limit as regards the value, and hear appeals from decrees of Assistant Collectors of the second class, and, except where an appeal is prohibited by the Code of Civil Procedure as applied by this Act, from orders of Assistant Collectors of the first and of the second class.

XIV of 1882.

(2) Whenever the state of the public business so requires, the Chief Commissioner may invest any Assistant Collector of the first class with the powers of a Collector for the trial and determination of suits and appeals under this Act, other than appeals from decisions of that Assistant Collector, and with the powers of a Deputy Commissioner under sections 24, 25 and 61, and may invest any Collector with all or any of the powers of a Commissioner under this Act.

[Bill, s. 92.]

Jurisdiction of Commissioner.

116. The Commissioner may, subject to the provisions of section 119, hear and determine appeals from original decrees of Collectors and of Assistant Collectors of the first class, and, except where an appeal is prohibited by the Code of Civil Procedure as applied by this Act, from original orders of Collectors.

XIV of 1882.

[Bill, s. 93.]

Jurisdiction of Judicial Commissioner.

117. The Judicial Commissioner may, subject to the provisions of section 119, hear and determine appeals from original decrees of Commissioners, and, except where an appeal is prohibited by the Code of Civil Procedure as applied by this Act, from original orders of Commissioners, and, subject also to the provisions of that Code as so applied, appeals from appellate decrees and orders of Collectors and of Commissioners.

XIV of 1882.

Appeals.

118. (1) Save as provided by sub-section (2) of this section, an appeal shall not lie—

(a) to the Collector—after the expiration of thirty days from the date of the decree or order complained of;

(b) to the Commissioner—after the expiration of sixty days from that date; or

(c) to the Judicial Commissioner—after the expiration of ninety days from that date.

(2) In computing these periods of thirty, sixty and ninety days, the limitation of the appeals shall be governed by the provisions of the Indian Limitation Act, 1877.

XV of 1877.

119. The decree or order of a Commissioner or of a Collector in a suit of value not exceeding one hundred rupees and of a description mentioned in clauses (2), (5), (9), (11), (14), (15), (16), (17) or (18) of section 108, or in an appeal from a decree or order in any such suit, shall be final, unless a question of right to enhance or otherwise vary the rent of a tenant, or a question relating to a title to land or to some interest in land, as between parties having conflicting claims thereto, has been determined by the decree or order of the Commissioner or of the Collector, in which case the decree or order last-mentioned shall be open to appeal in the manner provided in this Act.

Restrictions on appeals.

120. An order of a Deputy Commissioner sanctioning a remission of Deputy Commissioners' rent under section 19, or granting or refusing an application under section 24, or determining the amount of the outlay on an improvement under section 25, or directing or refusing to direct the ejectment of a tenant under section 61, shall be subject to appeal to the Commissioner, whose order on the appeal shall be final.

Distribution of Business.

121. Notwithstanding anything in the Code of Civil Procedure, the Deputy Commissioner may, by order in writing, direct that any business cognizable by him and the Courts subordinate to him shall be distributed among those Courts in such manner as he thinks fit:

Provided that a direction given under this section shall not empower any Court to exercise any power or deal with any business beyond the limits of its proper jurisdiction.

Transfer of Suits and other Proceedings.

122. The Commissioner or Deputy Commissioner may withdraw any suit or other proceeding instituted in any Court subordinate to him, and try it himself, or refer it for trial to any other such Court competent to try it.

Transfer of suits and other proceedings by Commissioners and Deputy Commissioners.

[Bill, s. 97.]

*The Oudh Rent Bill.**(Chapter VIII.—Jurisdiction of the Courts.—Sections 123-128.)**(Chapter IX.—Limitation of Suits.—Sections 129-134.)*

[Bill, s. 98.]

123. The Judicial Commissioner may order that any suit or other proceeding pending in any Court subordinate to him shall be transferred to any other such Court competent to dispose of it.

Transfer of suits and other proceedings by Judicial Commissioner.

Miscellaneous.

[Bill, s. 99.]

124. In the performance of their duties under this Act, Collectors shall be subordinate to, and subject to the direction and control of, Commissioners and the Chief Commissioner, and Assistant Collectors shall be subordinate to, and subject to the direction and control of, the Deputy Commissioners to whose districts they are respectively appointed:

Provided that nothing in this section shall empower the Chief Commissioner or any Commissioner or Deputy Commissioner to interfere in any way not authorized by this Act with any decision or order in a suit.

[Bill, s. 100.]

125. Suits which, under the provisions of this Act, may be brought by or against landlords, may be brought by or against managing agents or tahsildars of estates held under direct management, whether those estates are the property of Government or not.

Suits by or against managing agents or tahsildars of estates held under direct management.

[Bill, s. 101.]

126. (1) A sharer in a joint estate or under-proprietary or other tenure, in which a division of land has not been made among the sharers, shall not exercise any of the powers conferred by this Act in regard to the recovery of arrears of rent, enhancement of rent, ejectment of tenants, or distress, otherwise than through a manager authorized to collect the rents on behalf of all the sharers.

(2) In pattidari estates or tenures those powers shall be exercised only through a lambardar, or through the pattidar who is entitled to collect the rents of the patti.

(3) Nothing in this section shall be construed to affect any local custom or special contract.

[Bill, s. 102.]

127. Any person in possession of land occupied without consent of the landlord shall be liable for the rent of that land at the rate payable in the previous year, or, if rent was not payable in the previous year, at such rate as the Court may determine to be fair and equitable, and he shall not in respect of that land have any of the statutory privileges conferred by this Act.

Rent payable for land occupied without consent of landlord.

128. A Court may sit at any place within the local limits of its jurisdiction, or, in the case of an Assistant Collector, at any place within the limits of the district to which he is appointed.

Place of sitting of Courts.

[Bill, s. 103.]

CHAPTER IX.

LIMITATION OF SUITS.

129. Subject to the provisions as to legal disability contained in any law for the limitation of suits for the time being in force in Oudh, all suits under this Act shall, except as otherwise provided in this Chapter, be instituted within one year from the date of the accrual of the cause of action.

General limitation.

[Bill, s. 104.]

130. A suit for the delivery of a patta or the counterpart of a patta may be instituted at any time during the tenancy.

Suits for delivery of pattas or counterparts.

[Bill, s. 105.]

131. A suit by a tenant for the recovery of a holding which has been treated as abandoned under section 21 shall be instituted within three months from the date on which the landlord entered upon the holding.

Suits for recovery of holdings treated as abandoned.

132. A suit for the recovery of an arrear of revenue or rent, or, where rent is payable in kind, for the money-equivalent of rent, or of a share of profits, shall, except in the case mentioned in section 16, be instituted within three years from the last day of the month of Jeth of the Fasli year in which the arrear fell due.

Suits for arrears of revenue or rent or share of profits.

[Bill, s. 106.]

133. A suit for the recovery of money in the hands of an agent, or for the settlement of accounts or delivery of papers by an agent, may be instituted at any time during the continuance of the agency or within one year after its determination.

Suits against agents for money, or delivery of accounts or papers.

[Bill, s. 107.]

134. A suit regarding distress under section 103, 104 or 105, or to set aside an award in respect of a division, estimate, appraisal or proceeding under section 32, shall be instituted within three months from the date of the accrual of the cause of action.

Suits regarding distress and division or appraisal of produce.

[Bill, s. 108.]

*The Oudh Rent Bill.**(Chapter X.—Procedure.—Sections 135-144.)*

CHAPTER X.

PROCEDURE.

XIV of 1882.
[Bill, s. 109.]

135. The provisions of the Code of Civil Procedure as in force in Oudh shall, so far as they are not inconsistent with the provisions of this Act, apply to all suits and other proceedings under this Act.

[New.]

136. Every notice under this Act shall, if practicable, be served on the person to whom it is addressed or on an agent authorised by him to accept service on his behalf; but if that person or an agent so authorised cannot be found, service may be made by posting the notice at the usual place of residence of the person to whom the notice is addressed, or, if that person does not reside in the district wherein the land is situate, at the village-chaupal or other conspicuous place in the village wherein the land is situate.

[Bill, s. 110.]

137. In addition to the particulars required by section 50 of the Code of Civil Procedure to be specified in the plaint, the plaint shall contain the following particulars, namely:—

XIV of 1882.

- (a) the name of the village or estate, and of the pargana in which the land to which the suit relates is situate;
- (b) if the suit is for recovery of an arrear of rent, or for the enhancement or abatement of rent, or for the ejectment of a tenant, or for contesting a notice of enhancement of rent, or for contesting a notice of ejectment, or for the recovery of the occupancy or possession of any land, then the extent, situation and designation of the land to which the suit relates and, where fields have been numbered in a Government survey, the number (if it is possible to give it) of each field;
- (c) if the suit is for recovery of an arrear of rent or revenue, then the yearly rent or revenue of the land, the amount (if any) received on account of the year or years for which the claim is made, the amount in arrear and the time in respect of which it is alleged to be due;
- (d) if the suit is for the delivery of a patta or the counterpart of a patta, then all the particulars mentioned in section 8.

[Bill, s. 111.]

138. When in any suit between a landlord and an under-proprietor or tenant the right to receive the rent of land is claimed by a third person, on the ground that he, or a person through whom he claims, has actually and in good faith received and enjoyed the rent up to the time of the commencement of the suit, that third person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by him or the person through whom he claims shall be

enquired into, and the suit shall be decided according to the result of the inquiry:

Provided always that the decision of the Court shall not affect the right of any party having a legal right to the rent of the land to establish his title thereto in a Court of competent jurisdiction.

Summons to defend. 139. In suits under clauses (1), (2), (7), (10) and (11) of section 108, the summons to the defendant shall be for the final disposal of the suit. [Bill, s. 112]

140. In a suit to recover an arrear of rent, no payment of money set-off shall be allowed into Court of defendants, against the claim except such amount as may be due to the defendant on an unexecuted decree under this Act against the plaintiff. [Bill, s. 113]

141. When an arrear of rent remains due from any tenant, he shall be liable to pay interest on the arrear at the rate of one per cent. per mensem. [New.]

142. (1) In any suit under this Act involving a claim to money, the defendant may, at any stage of the suit, deposit in Court such sum of money as he considers a satisfaction in full of the plaintiff's claim, together with the costs incurred by the plaintiff up to the time of the making of the deposit. [Bill, s. 114]

(2) Notice of the deposit shall be given to the plaintiff, and the amount deposited shall be paid to him on his application.

(3) From the date of the making of a deposit under this section, interest shall not be allowed to the plaintiff on the sum deposited, whether that sum be in full of the plaintiff's claim or fall short thereof.

143. In any case in which the defendant deposits less than the amount claimed by the plaintiff, nothing in the last foregoing section shall bar the plaintiff from proceeding in the suit for the recovery of the balance. [Bill, s. 115]

144. (1) A Court may, if it thinks fit, itself make a local investigation instead of issuing a commission under section 392 of the Code of Civil Procedure. [New. Cf. Bill, s. 117]

(2) When the Court itself makes a local investigation, the provisions of section 393 of that Code with respect to the recording of evidence shall apply to the Court, and any observations which the Court

XIV of 18

*The Oudh Rent Bill.**(Chapter X.—Procedure.—Sections 145-155.)*

sees fit to record on its proceedings shall be received as evidence in the suit.

Decrees.

118.] 145. A process of execution shall not be issued on a decree under this Act when the application for the issue of the process is made after the lapse of three years from the date of the decree, unless the decree is for a sum exceeding five hundred rupees, in which case the period within which execution may be had shall be regulated by the law for the time being in force as to the period allowed for the execution of decrees of Civil Courts.

119.] 146. When a decree for money is made in any immediate execution suit under this Act, the Court may, on the oral application of the party in whose favour the decree is passed, direct immediate execution thereof in the manner described in section 256 of the Code of Civil Procedure.

120.] 147. When a decree in favour of the plaintiff is made in a suit for an enhancement of rent, the Court shall declare the date from which the enhancement shall take effect.

121.] 148. (1) If the decree is for the delivery of papers or accounts, it may be enforced by the imprisonment in the civil jail of the party against whom it is made or by the attachment of his property, or by both imprisonment and attachment.

(2) The imprisonment and attachment may be continued until the party complies with the terms of the decree:

Provided that he shall not be imprisoned under this section for a longer period than six months.

122.] 149. A decree for the delivery of a *patta* or of the counterpart of a *patta* shall specify all the particulars mentioned in section 8, and such other particulars in accordance with the provisions of this Act as the Court deems fit.

123.] 150. If the decree is for the delivery of a *patta* or the counterpart of a *patta*, and the party ordered to deliver the *patta* or counterpart neglects or refuses to do so, the Court may grant a *patta* or counterpart in conformity with the terms of the decree, and that *patta* or counterpart shall have the same effect as if delivered by the party against whom the decree was passed.

151. If the decree is for money, a process in execution shall not issue against the immovable property of the judgment-debtor, other than for attachment of that property, unless satisfaction of the decree cannot be obtained against his moveable property. [Bill, s. 124.]

152. If the decree is for an arrear of rent due in respect of an under-proprietary right, the interest of the judgment-debtor in that right may, subject to the provisions of this Act, be sold in execution of the decree. [Bill, s. 125.]

153. A beneficial lease or other incumbrance created by an under-proprietor on his tenure after the twenty-second day of July, 1868, shall not be valid in the event of the sale of his rights and interests in execution of a decree for arrears of rent, unless the incumbrance has been registered under any rules or law for the time being in force in Oudh, within four months after the creation thereof, and not less than thirty days before the date of attachment of those rights and interests. [Bill, s. 126.]

154. (1) When an under-proprietor creates any such incumbrance and fails to pay to the proprietor all or any part of the rent subsequently accruing in respect of the land subject to the incumbrance, the incumbrancer shall be liable to pay to the proprietor the whole or the part of that rent, as the case may be, unless the proprietor has agreed in writing to waive any claim which he might otherwise have made on the incumbrancer under this section. [Bill, s. 127.]

(2) Where after the passing of this Act an under-proprietor transfers his rights or any part thereof in land, and the transferee enters into possession, the transferee shall, subject to any agreement in writing with the proprietor to the contrary, be liable to pay to the proprietor any arrears of rent due in respect of the land at the date of the transfer.

155. (1) When land is sold in execution of a decree under this Act, and the land or any lot thereof has been knocked down to a stranger, any co-sharer, other than the judgment-debtor, may, before sunset on the day of sale, claim to take the land or lot, as the case may be, at the sum at which it was so knocked down. [Bill, s. 128.]

(2) A like claim may be made, if the land is a proprietary tenure, by an under-proprietor, and if the land is an under-proprietary tenure, by a proprietor.

(3) Any claim made under this section shall be allowed:

Provided that, if a claim to the same land or lot is made by a proprietor or under-proprietor as well

*The Oudh Rent Bill.**(Chapter XI.—General.—Sections 156-158.—Schedule A.)*

as by a co-sharer, the claim of the co-sharer shall prevail:

Provided also that a claim shall not be allowed unless the claimant fulfils all the conditions of the sale binding on a purchaser.

CHAPTER XI.

GENERAL.

III of 1877, [Bill s. 130.] 156. Notwithstanding anything in the Indian Registration Act, 1877, registration of statutory pattas unnecessary. pattas granted for any term not exceeding seven years by landlords to tenants to whom section 36 or section 37 of this Act applies shall be deemed good and valid without their being registered.

[Bill, s. 131.] 157. The provisions of sections 4, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47 and 48 shall not extend to the areas specified in Schedule D to this Act, or to any other area which the Chief Commissioner may from time to time, by notification in the local official Gazette, add to that schedule, but the Chief Commissioner may from time to time, by like notification, extend those provisions, or any of them, to any of those areas.

[Bill, s. 132.] 158. (1) The Chief Commissioner may, from time to time, make rules consistent with this Act for the guidance of all persons in matters connected with the enforcement of this Act.

(2) The Chief Commissioner shall, before making rules under this section, publish a draft of the proposed rules in such manner as, in his opinion, is sufficient.

(3) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(4) The Chief Commissioner shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) Every rule made under this section shall be published in the local official Gazette in English and in such other language or languages as the Chief Commissioner directs, and that publication shall be conclusive proof that the rule has been made as required by this section.

[Bill, Sch. A.]

SCHEDULE A.*

(See section 15.)

I, A. B., of , &c., solemnly declare that I did personally [or by my agent C. D.] on the day of tender payment to E. F. at (the place where the (revenue or) rent of the lands at , [held or] cultivated by me under [or from or jointly with] the said E. F., is usually payable) of the sum of rupees as and for the whole amount due from me in respect of the (revenue or) rent of the said lands from the month of to the month of , both inclusive. I further declare that the said E. F. refused to accept the said sum so tendered [or to give me a receipt in full forthwith for the sum so tendered]. And

* If this declaration is made by an agent it must be altered accordingly.

I declare that, to the best of my belief, the sum of rupees so tendered, and which I now desire to pay into Court, is the full amount which I owe to the said E. F. on account of the (revenue or) rent of the said lands from the month of to the month of , both inclusive, and that I owe to the said E. F. no further sum on account of the (revenue or) rent of the said lands.

I, the person named in the above declaration, do declare that what is stated therein is true to the best of my information and belief.

SCHEDULE B.†

(See section 15.)

Court of the of
Dated the
day of 18
To E. F., of &c.

[Bill, Sch.]

With reference to the within declaration, you are hereby informed that the sum of rupees therein mentioned is now in deposit in this Court, and that the above sum will be paid to you or your recognised agent on application. And take notice that if you have any further claim or demand whatsoever to make against the said A. B. in respect of the (revenue or) rent of the said lands, you must institute a suit in Court for the establishment of that claim or demand within six calendar months from this date, otherwise your claim will be for ever barred.

SCHEDULE C.

(See section 84.)

Office of officer appointed to sell distrained property.

[Bill, Sch.]

A. B.—Distrainer.

Whereas the said A. B. has applied to have the distrained property specified below sold for the recovery of alleged to be due to him as arrears of rent, you are hereby required either to pay the said sum to the said A. B., or to institute a suit before the Court to contest the demand within fifteen days from the receipt of this notice, failing which the property will be sold.

Dated this day of 188

SCHEDULE D.

(See section 157.)

(1) Parganas Kukra Mailani, Bhur, Srinagar, [New.] Nighasan, Patia, Khairigarh, Dhaurahra and Ferozabad in the district of Kheri;

(2) alluvial mahals for the time being registered [New.] as such under the rules made under clause (b) of section 220 of the Oudh Land-revenue Act, 1876; XVII of and

(3) lands heretofore or hereafter granted under [New.] the waste-land rules for the time being in force in Oudh.

† This is to be by endorsement on a copy of the declaration under schedule A made by the person paying the money into Court.

S. HARVEY JAMES,
Offg. Secy. to the Govt. of India.

The following Report of the Select Committee on the Bill to consolidate and amend the law relating to Rent in Oudh was presented to the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 24th September, 1886 :—

LEGISLATIVE DEPARTMENT.

WE, the undersigned, Members of the Select Committee to which the Bill to consolidate and amend the law relating to Rent in Oudh was referred, have considered the Bill and the papers noted on the margin, and have now the honour to submit

From the Chief Secretary to the Government of the North-Western Provinces and Oudh, No. ^{2156R.}₀₈₋₆₀, dated the 6th September, 1886.

Memorandum by Bábú Ram Saran Das, Fyzabad, dated 1st August, 1886.

Opinion of Seth Jaidyal, Sitapur, dated 23rd August, 1886.

Minute by Thakur Min-shar Bikish Singh, Taluqdár, Rampur Muthra, Sitapur.

Memorials from Zamindárs of Lucknow, Unao, Fyzabad, Barabanki and Sultanpur.

this our Report.

2. We append copy of the Bill as amended by us, and have in this Report cited the sections of that Bill in brackets after those of the Bill as introduced. The portions of the amended Bill which differ from the corresponding portions of the Bill as introduced are printed in italics.

3. Since the Bill was introduced, the Lieutenant-Governor and Chief Commissioner of the North-Western Provinces and Oudh has consulted selected local officers and held repeated conferences with the Taluqdárs of Oudh at Lucknow, and most of the alterations which we propose to make in the Bill have been approved by his Honour, and proposed or assented to by the Taluqdárs.

4. These alterations will be noticed in the following paragraphs of this Report as nearly as may be in the order of the sections in which they occur.

5. *Section 1 (1).*—We recommend an addition to this section, bringing the proposed Act into force with effect from the 1st of January, 1887. It is desirable that the Revenue Courts should have time to examine the details of the new law before bringing them into practice. One effect of deferring the operation of the law till the 1st January next will be to prevent the issue of ejectment-notices in November for the agricultural season of 1887; but after the unprecedented number of recent evictions, due in part to the uncertainties and discussions of the last three years, it is not undesirable that the notices should be suspended for one season, and that landlords should have time thoroughly to consider the effects of the law before the new procedure is brought into force. Statutory enhancement at the end of the current season, whenever the seven years' term shall have expired, will not be interfered with.

We have also, by an addition to this section, proposed to authorise the Chief Commissioner to exercise between the passing and the commencement of the Act any power conferred upon him by the Act to make rules or issue orders.

6. *Section 3 (3).*—The definitions of "Oudh" and "Assistant Commissioner" are rendered unnecessary by the form in which we have re-drawn sections 1 (1) and 85 (110).

We have assimilated the definition of "land" to the description of that expression in section 1 of the North-Western Provinces Rent Act, 1881. The definition in the Oudh Rent Act of 1868 has been held to exclude from the jurisdiction of Revenue Courts suits for the rent of land which at the time of settlement was comprised in a village-site, *jhil* or grove, and therefore excluded from assessment, but which has since settlement been brought under cultivation.

In the definition of "revenue" we have omitted the article "the" before the word "money," in order to remove any doubt as to whether cesses are included in "revenue."

In the definition of "tenant" the references to sections 7 (8), 10 (11) and 116, in connection with the kadárs, have been omitted as unnecessary.

The Oudh Land-revenue Act, 1876, renders the definition of "lambardár" superfluous.

We have added definitions of the words "registered", "signed" and "value."

7. *Section 4 (4).*—The Hon'ble Rana Shankar Baksh Singh Bahadur in his speech in the Council of the Governor-General on the 9th June, 1886, and he and other Taluqdárs since that date, have represented the grave inconvenience which may result from the application of all the provisions of the Act to *jungle* (forest), *nautor* (land given on clearance-lease), *banjar* (old fallow), *partis* (new fallow), land rendered culturable at the expense of the landlord, and alluvial land. There appears to us to be ground for the contention of the Taluqdárs that the terms of section 4 (4) should be relaxed in the case of some of these lands. We have therefore made to this section an addition providing that the section shall not be construed to affect any contract relating to reclaimed land till the expiration of fourteen years from the date of the reclamation, and to Schedule D an addition which, read with section 131 (157), will exclude alluvial mahals from the operation of the sections respecting statutory tenancy, and enhancement of rent. We have included in the description of reclaimed land brought into cultivation after lying fallow for seven years, and have made it clear that the provisions of section 4 (4) respecting reclaimed land apply to past as well as to future contracts relating to that land. Those contracts may be either oral or written.

8. *Section 5A. (6)*.—We have, in accordance with the wish of the Taluqdárs, provided that the conferment of occupancy-rights under this section must be by registered document.

9. *Section 7 (8)*.—On the suggestion of the Taluqdárs, we have added to this section a clause to the effect that a patta may contain any special conditions not inconsistent with the Act.

10. *Section 10 (11)*.—Also on their suggestion, we have declared the landlord who grants a patta to be entitled to receive a counterpart signed by or on behalf of the tenant.

11. *Section 13 (13)*.—Also on their suggestion, we have removed from this section and section 83 (108) all references to "acknowledgments of the tender of rent."

12. *Section 15 (15)*.—We have proposed that applications for the repayment of deposits of revenue or rent may be on plain paper.

13. *Section 17*.—The Taluqdárs ask for some modification of this section. As the section has never been acted on, and may, in the opinion of His Honour the Lieutenant-Governor and Chief Commissioner, be entirely omitted, we propose to remove it from the Bill.

14. *Section 19 (18)*.—The words "by diluvion" have been omitted. A holding may be diminished by other causes, such as the acquisition of land for public purposes or a landlord's improvement. We have prefixed to the section a saving of the provisions of section 26 (29) as redrawn by us.

15. *Section 20 (19)*.—We have, with the concurrence of His Honour the Lieutenant-Governor and Chief Commissioner, made the sanction of the Deputy Commissioner a condition precedent to the remission of rent under this section, and have made the actual power of the tenant to pay in the circumstances of the case the test of remission. We have restored the proviso to the corresponding section of the present law so far as it affects under-proprietors holding a sub-settlement and tenants having a right of occupancy. We have provided that where a remission of rent under this section causes a material diminution of the assets of the landlord in the village in which the remission is given, the revenue-authorities shall take into consideration any claim made by the landlord for a remission of revenue. Lastly, we have by a section added after section 95 (119) made an order of a Deputy Commissioner sanctioning a remission of rent subject to appeal to the Commissioner.

16. *Section 21 (20)*.—We have, in accordance with the wish of the Taluqdárs, added to this section a sub-section, to the effect that a tenant cannot, without the consent of his landlord, relinquish a part only of his holding. We have also provided, on the advice of His Honour the Lieutenant-Governor and Chief Commissioner, that the application of a tenant for the service of a notice of intended relinquishment on his landlord may be on plain paper.

17. *Section 21A (21)*.—We propose to omit the word "voluntarily" in the first clause of the section. When the landlord proposes to enter on the holding, he has to deal with the question of fact as to whether or not the holding has been abandoned. The question as to whether or not the abandonment was voluntary is one for decision, should the tenant claim restoration.

In the second sub-section it is proposed to substitute, in accordance with official opinion and the proposals of the Taluqdárs, the tahsildár for the supervisor-kanungo as the officer to receive notices under this section. It is represented that the supervisor-kanungo, being engaged on field inspections over a considerable area, may not be readily found, and that it will be on the whole more convenient to lodge the notice at the office of the tahsildár.

We have, with a view to obviating cases of hardship and preventing future litigation, inserted a provision adopted from the Bengal Tenancy Act, VIII of 1885, enabling the Court to award compensation to any party injured.

We have added after section 105 (130) a section prescribing three months from the date on which the landlord has entered upon a holding as the period within which the tenant may institute a suit for the recovery of the holding.

18. *Section 22 (22)*.—We have provided that compensation shall not be payable for any improvement made thirty years or more before the date of an ejectment.

We have also provided for the case, reported to be frequent in some parts of the Province, in which an improvement is made by a tenant, not actually on his holding, but on adjacent land belonging to his landlord. The arrangement is convenient. Patches of waste land often adjoin cultivation, on which a well can be built without reducing the cultivated area. Where advantage has been taken of this outlying land by an improving tenant in the past, it has been with the consent, express or tacit, of the landlord.

19. *Section 24 (24)*.—We have added after this section a section providing for the determination and registration of the outlay on an improvement made by a tenant with the permission of the Deputy Commissioner. We have also provided by a section added after section 95 (119), on the suggestion of the Taluqdárs, that an order of a Deputy Commissioner granting or refusing an application of a tenant for permission to make an improvement, or determining and registering the amount of the outlay on an improvement, shall be subject to appeal to the Commissioner.

20. *Section 26 (29).*—We have added three sub-sections to this section—the first providing that a landlord making an improvement on the holding of a tenant without a right of occupancy shall be liable to compensate the tenant for any loss which he may cause to the tenant when making it; the second providing for the abatement of the tenant's rent when the effect of the improvement is to impair the productive powers of his holding; and the third providing that a landlord may not make an improvement on the holding of a tenant with a right of occupancy without the consent of the tenant.

21. *Section 35 (36).*—This section has been so amended as to exclude *shikmi* tenants from the acquisition of statutory privileges. It would go very far beyond the declared objects of the Bill to permit any statutory privileges to be conveyed by sub-letting.

We have added here and elsewhere words intended to meet the case of tenants occupying holdings in the rent or area of which there has been no change during their tenancy.

22. *Section 35A (37).*—We have, in accordance with the wish of the Taluqdárs, added an explanation not strictly necessary, but possibly useful, to the effect that sections 35 (36) and 35A (37) have effect subject to the provisions of section 4 (4) relating to land not previously cultivated, and subject also to the provisions of section 131 (157) excluding certain classes of land from the operation of certain sections of the proposed Act.

23. *Section 36 (38, 39 and 40).*—We have broken up this section into three sections. By the first of these new sections we provide for the enhancement of the rent of a statutory tenant within certain limits by contract or by notice; by the second we prescribe the time when the enhancement may be made; and by the third we fix the time for the service of the notice of enhancement. We also provide by these sections that enhancement may be made in consideration of an improvement effected or acquired by the landlord in the same manner as the statutory enhancement, by contract or notice, as the case may be, with the exception that enhancement under section 36K (50) may take place in any year of the tenancy.

24. *Section 36C (43).*—We have added a sixth ground of objection, in consequence of the proposal to allow enhancement for a landlord's improvement to be governed by the same procedure as that of statutory enhancement.

25. *Sections 36D (44) and 36E (45).*—We have recast the form of these sections, leaving their substance unaltered.

26. *Section 36G (47).*—We have added to this section a sub-section providing for the case in which an in-coming tenant by agreement with the landlord commutes to a cash-rent the grain-rent paid by his predecessor.

27. *Section 36I (48).*—We have added to this section a sub-section limiting the term "heir" in accordance with the principle of section 9 of the North-Western Provinces Rent Act, 1881.

28. *Section 36K (50).*—In accordance with the wish of the Taluqdárs, we have inserted words enabling the landlord to enhance rent during the currency of a tenancy when the landlord has acquired by purchase the improvement of a tenant.

29. *Section 36J (51).*—We have provided for orders under this section applying to specified areas only.

30. *Section 37 (52).*—We have, in accordance with the wish of the Taluqdárs, made the proviso to section 41 of the Act of 1868 apply to tenants holding under special agreements or decrees of Court as well as to tenants having a right of occupancy.

31. *Section 38A (54).*—With respect to this section the Government of the North-Western Provinces and Oudh writes as follows:—

"This section in the Bill contains the substantive provisions of the proposed law in regard to compensation for disturbance. This was one of the two points in the entire measure to which the Taluqdárs in their Association took strong exception. They argued that the concession to the tenantry of a right to compensation for disturbance assumed and recognized the existence of a right to possession; that this assumption was opposed to the conclusion elicited by the enquiries and correspondence of 1866; that eviction was a necessary remedy against bad characters; and that they had a reasonable objection to remunerating tenants for a course of conduct which in the interests of their fellow-villagers made expulsion necessary, and that the rate of compensation, a year's rent, operated as a practical bar to the landlord's use of his admitted authority.

The Lieutenant-Governor cannot admit that the argument which would connect compensation for disturbance with the creation or recognition of tenant-right is sustainable. Nevertheless it is clear that the proprietary body are much averse to be placed under the liability to make payments of this nature to their tenants; and after much discussion and debate the Taluqdárs have themselves tendered an alternative. They recognize the necessity of some check on eviction. The landlords of the Province have been accustomed for the last eighteen years to use the eviction-notice as a lever for enhancement; and if the system continues under the new Act, the provisions for the limitation of enhancement might be very extensively evaded. The Association ask, then, that while the notice of enhancement is on plain paper, the notice of ejectment shall bear a stamp-duty.

They further propose that the stamp-duty shall be the equivalent of a half-year's rent on the holding.

The plan of substituting a stamp-duty for compensation is undoubtedly open to criticism. So far as this Government is concerned, there is no desire whatever to increase the stamp-revenue at the landlord's expense, or to impose any additional costs of this kind upon transactions between landlord and tenant. The Lieutenant-Governor would certainly not have proposed, for his own part, to turn compensation into a tax; and he has no doubt that it would, on principle, have been better to adhere to the simple and logical provision which would prevent a landlord from ejecting a tenant until he also gave him some indemnity.

Nevertheless, when this alternative is put forward and supported by the Association, and since it has become clear that the Taluqdárs unanimously prefer to pay stamp-duty rather than compensation to the tenant, while undoubtedly the stamp-duty would answer the purpose of a check on ejectment as effectively as compensation-payment at the same rate, the Lieutenant-Governor feels bound to accept and submit to His Excellency the Governor General in Council this proposal as an admissible compromise upon an important and closely-debated provision of the Bill. It is to be understood that the landlords are even more strenuously averse to the 129th section of the Bill, which vests the Government with a general statutory power of interfering with the management of their estates than they are to the levy of compensation on disturbance.

The Lieutenant-Governor, moreover, after consulting many officers of experience, is disposed to accept a half-year's rent as probably a sufficient check upon inconsiderate and injurious eviction. He is further of opinion that a varying duty, such as that proposed, is better than a fixed one. Any fixed duty of considerable value would be prohibitive of the removal of the smaller tenants who possess least means of developing and improving their holdings, and among whom, if bad character is a genuine motive for eviction, bad characters will ordinarily be found.

The Lieutenant-Governor therefore recommends that the Government of India should accept the proposal of the Association, and that, instead of the compensation for disturbance provided by section 38A of the published Bill, the law should impose a stamp-duty of the value of a half-year's rent on notices of ejectment. If the character of the duty as a check on eviction is to be maintained, it must be provided that the duty cannot be recovered from the tenant as a cost of Court, should the notice of ejectment, to which it is affixed, be contested.

As it is manifestly desirable, however, that the duty should be no higher than the least amount necessary for its purpose, the maximum limit may be placed at Rs. 25; and when notice issues on the heir of a deceased tenant, no stamp-duty should be imposed. The Bill gives the landlord the right to introduce a new tenant at the market-rate of rent, and expressly excludes the heir of the deceased tenant from any claim to re-entry. There need, therefore, be no restraint on the landlord's power to remove him.

I am to remark that in this and other cases, for example, the tenant's notice of relinquishment, no stamp-fees will be levied upon proceedings that are taken for the information of landlord and tenant. This may be taken as to some extent a set-off against the duty leviable upon ejectment notices. It may be added that if, as is anticipated, the imposition of a stamp proves an effective check upon the issue of the notices, the landlord's costs under this head ought not to be usually heavy."

We accept the proposal of the Taluqdárs on the grounds on which it is supported by His Honour the Lieutenant-Governor and Chief Commissioner, and have recommended that effect be given to it in section 39 (55) of the Bill.

32. *Section 41 (59).*—We have, in accordance with the wish of the Taluqdárs, inserted the words "in writing" for the word "expressly" in this section.

33. *Section 42 (60).*—Where the Court has been merely applied to for assistance to eject, it seems undesirable to impose on it an elaborate inquiry as to whether or not compensation for improvements is due. We have altered the section accordingly.

34. *Section 43A (62).*—The Taluqdárs have proposed several additional grounds for ejectment, but the only one of those grounds which we have been able to accept is one relating to sub-letting, and we have adopted that only in a modified form. It seems to us sufficient to allow ejectment during the currency of a statutory period only when the entire holding has been sublet.

We have inserted a special clause to meet the case of tenants of reclaimed lands.

35. *Section 44 (63).*—We have, on the suggestion of the Taluqdárs, extended the period for ejectment from the fifteenth to the thirtieth of June.

36. *Section 45 (64).*—We have added after this section a section allowing a tenant in a suit for his ejectment to file any claim for compensation which he may have on account of improvements, and requiring the decree to be made contingent on the payment into Court of any sum found due to him on that account.

37. *Section 46 A (67).*—Under-proprietary communities as well as proprietary communities have to be provided for, and we have provided for both.

38. *Section 46 B (68).*—We have added to this section words to prevent *shikmi* tenants from acquiring statutory privileges by the occupation of land.

39. We have added after section 46 B (68) a section proposed by the Government of the North-Western Provinces and Oudh with respect to long leases. As regards this new section that Government writes as follows:—

"In the minute of the 15th January, 1886, forwarded with my letter No. 178 of the same date, the Lieutenant-Governor recommended that the Bill should expressly permit the execution of special agreements for a term longer than seven years, with the effect that upon the expiry of such agreements the landlord would not be liable for compensation if he disturbed the tenant, although the rule limiting enhancement on the next tenant would prevail. His Excellency the Governor General in Council, in his speech on the reference of the Bill to a Select Committee, referred to this proposition as a remedy in the landlord's power for neutralizing the liability to compensation; and the Association, in their letter of the 28th August, have asked that this authority be expressly recognized in the Bill.

A proviso has been added to meet the possible case of an arrangement by which a lease of eight years might be made to include the statutory enhancement in the eighth year, and so permit a second enhancement in the ninth."

40. After the new section referred to in the last foregoing paragraph we have added a section requiring changes in the rent, and alterations in the area, of the holdings of statutory tenants to be recorded, and a further section limiting the application of the expressions "special agreement" and "decree of Court" to agreements and decrees made and passed before the passing of the proposed Act.

41. *Chapter VI (VII).*—The amendments which we have made in this Chapter are verbal and do not call for remark.

42. *Section 83 (108).*—We have added to clause (2) words suggested by the case at I. L. R. 1 All. 217, and now to be found in clause (a) of section 93, Act XII, 1881.

43. *Section 84 (109).*—There have been hitherto three grades of Courts, subordinate to the Court of the Collector. It is proposed to eliminate the Court of the Deputy Collector and, as in the North-Western Provinces, to have only two Courts subordinate to the Court of the Collector, namely :—

- (1) the Court of the Assistant Collector of the second class ; and
- (2) the Court of the Assistant Collector of the first class ;

and to assign to the latter Court the jurisdiction given to the Court of the Deputy Collector by section 90 of the Act of 1838 in addition to that which the Court of an Assistant Collector of the first class does now enjoy.

It was further the intention of that Act that from all decrees and orders passed by Assistant Collectors an appeal should lie to the Collector, and such has been the practice hitherto. Now, however, that the jurisdiction of the Assistant Collector of the first class is to be extended, it will be necessary that appeals from his decrees should lie, as did appeals from the Court of the Deputy Collector, to the Court of the Commissioner. A certain number of petty appeals will in this way be added to the files of Commissioners ; but as the work which now falls to their share will be considerably lightened by a reduction in the number of ejectment and enhancement cases, this change will be attended with no inconvenience.

No alteration in the forum of appeal is to be made as regards orders.

44. *Sections 85—93 (110—117).*—The alterations made in these sections are consequent on the amendments of sections 3 (3) and 84 (109) referred to in paragraphs 6 and 43 of this Report.

45. *Section 94 (118).*—This section reproduces section 94 of the Act of 1868, with the exception that the period for an appeal to the Commissioner has been extended from forty-two to sixty days.

46. *Section 95 (119).*—We have added after this section a section providing for an appeal to the Commissioner from orders passed by Deputy Commissioners as such and not as Collectors under the Act.

47. *Section 96 (121).*—We have altered the form of this section to that of section 58 of the Punjab Courts Act, 1884.

48. *Section 101 (125).*—We have, at the request of the Taluqdárs, added to this section a sub-section to the effect that nothing in the section shall be construed to affect any local custom or special contract.

49. *Section 103 (128).*—We have modified the expression of this section with reference to that of section 207 of the North-Western Provinces Land-revenue Act, 1873.

50. *Section 105 (130).*—The addition of the section inserted after section 105 (130) is explained in paragraph 17 of this Report.

51. *Section 106 (132).*—We have amended this section in accordance with the wishes of the Taluqdárs. One of the amendments has been referred to in paragraph 42 of this Report. The other was suggested to the Taluqdárs by Schedule II to the Bengal Tenancy Act, 1885.

52. *Section 109 (135).*—After this section we have inserted a section prescribing the mode of service of notices under the Act. The new section renders it possible to dispense with the very numerous directions of Act XIX of 1838 in this matter.

53. *Section 113 (140).*—After this section we have, at the request of the Taluqdárs, inserted a section in the terms of section 34 of the North-Western Provinces Rent Act, 1881.

54. *Section 127 (154).*—To this section we have added a sub-section to the effect that, where after the passing of the Act an under-proprietor transfers his rights or any part thereof in land, and the transferee enters into possession, the transferee shall, subject to any written agreement with the proprietor to the contrary, be liable to pay to the proprietor any arrears of rent due in respect of the land at the date of the transfer. The "rent" of an under-proprietor in Oudh is really the land-revenue for which his land is responsible.

55. *Section 128 (155).*—We have, on the suggestion of the Taluqdárs, provided that, where land sold in execution of a decree under the Act is a proprietary tenure, a claim to pre-emption may be preferred by an under-proprietor.

56. *Section 129.*—We propose to omit this section with reference to the following remarks of the Government of the North-Western Provinces and Oudh :—

"Section 129 reserves to the Local Government power to appoint an officer for the revision of the rents of an estate which is suffering from grave mismanagement. After careful consideration of all the circumstances the Lieutenant-Governor is of opinion that, in view of the safeguards to be provided by the amended law against

oppressive enhancement, it is unnecessary that he should press the legislature to arm the executive Government with this authority by special enactment. The Taluqdárs are understood to desire earnestly that a provision which is particularly unpalatable to them should be withdrawn; and as the conditions of the sanad will still remain in full force, the Lieutenant-Governor hopes the Government of India may be pleased to make the concession."

57. *Section 131 (157).*—The entries in Schedule D are based on the following remarks of the Government of the North-Western Provinces and Oudh:—

"In Schedule D, on the advice of the Commissioner of Sitapur, the Lieutenant-Governor proposes to enter as subject to section 131 of the Bill the parganas of Aukra Mailani, Bhur, Srinagar, Nighasan, Palia, Khairigarh, Dhaurahra, and Firozabad in the district of Kheri. They are all in the Tarai and are characterized by a cultivation which fluctuates with every season, and the rent-customs are adapted to a state of agriculture in which the rules suited for a settled system of cultivation are inapplicable. * * * * *

"The alluvial lands on all the great rivers partake of the same character as the Tara parganas of Kheri. Cultivation depends on the accidents of river-action, and varies in extent and productiveness with every year. By rules framed and published under the Land-revenue Act, these have been formed into alluvial mahals and separately registered: for the most part they are the subject of quinquennial re-assessment, and are all examined and surveyed every five years. The Lieutenant-Governor proposes, therefore, that all alluvial mahals so registered under G. O. No. 2937R., dated 30th September, 1878, shall, on being so registered, be held to be scheduled in Schedule D.

"Thirdly, the Lieutenant-Governor is of opinion that all waste-land grants, whether granted on lease or in perpetuity, should be also included in Schedule D. The conditions on which these grants were made by the Government are special. In leased grants the grantee is under an engagement to bring a specified area under cultivation within a specified period; and the grants in perpetuity were also made upon the anticipation of a similar gradual extension of cultivation. In such circumstances, to place any statutory restriction upon the power of the grantee to deal freely with the tenants whom he may have induced to settle upon the land, might be tantamount to a subsequent alteration of the original terms of the contract entered into between the grantees and the Government, might hinder the breaking up of the land, and might impose upon the grantee unforeseen embarrassment in the fulfilment of his engagements."

We have so amended section 131 (157) as to enable the Chief Commissioner to add to Schedule D if occasion require.

58. *Section 132 (158).*—We have added to this section sub-sections prescribing the procedure to be followed in making rules under the section.

59. The publication ordered by the Council has been made as follows:—

In English.

<i>Gazette.</i>	<i>Date.</i>
Gazette of India	12th, 19th and 26th June, 1886.
North-Western Provinces and Oudh Government Gazette	19th and 26th June, and 3rd July, 1886.

In the Vernacular.

<i>Province.</i>	<i>Language.</i>	<i>Date.</i>
North-Western Provinces and Oudh	Urdu	10th, 17th and 24th July, 1886.

60. We do not think that the measure has been so altered as to require re-publication, and we recommend that it be passed as now amended.

J. W. QUINTON.

C. P. ILBERT.

A. COLVIN.

RANA SHANKAR BAKSH SINGH.*

The 23rd September, 1886.

*I HAVE signed the Report subject to reservation on the following points:—

1. (1) As Government is entitled to a share of the produce of each bighá of land, and as it does not only take as revenue one-half of the rent realized by the landlord from his tenant, but

also levies from the former many cesses like the Road-cess, the Dák-cess, contributions to Public Hospitals, the New cess and the local rate, and as in consequence of these cesses and of the cost of management and the various losses entailed upon the landlord by the tenant abandoning his holding, by his death or by his having no assets, the landlord's share is reduced to about one-third of the rent, there is no reason why he alone should be made to bear the whole loss. It is only when the Government grants a remission of the revenue that the landlord may be required to remit a portion of his rent. The rule as laid down in section 23, Act XII of 1881, is just and reasonable.

(2) The rule about the remission of rent as laid down in the Oudh Rent Act, XIX of 1868, section 20, having worked well during the last 18 years, and no complaint having been brought against it, need not be altered or modified. The statutory privileges of seven years' lease and of the limitation of enhancement to one anna in the rupee are stronger grounds for making the tenant alone liable to accidental losses. For instance, a tenant who suffers from a diminution of the produce caused by hail in one year may recoup himself for the loss thus sustained during the succeeding years by improved cultivation or high market-rates. But, if the landlord is made to share with the tenant such accidental losses, he cannot be expected to compensate himself by sharing the profits of a more abundant crop in better years; and, as he can only make a limited enhancement even after seven years, he has no prospect of making up for such losses.

(3) The limitation of enhancement will place the Oudh tenant in a better position than that of his brother-tenant in the North-Western Provinces.

(4) Generally speaking, the average rent taken from tenants in Oudh is lower than that taken in the North-Western Provinces.

(5) The landlords of Oudh are less wealthy than those of the North-Western Provinces, for Oudh has enjoyed the blessings of peace for the last 28 years only, while the North-Western Provinces have enjoyed those inestimable blessings for the last 100 years. The indebtedness of the taluqdárs and the passing of Act XXIV of 1870 are evidence of their not being wealthy. If there are a few large taluqdárs in Oudh, there are more such Rájás and wealthy Málguzárs in the North-Western Provinces.

2. The mode of estimating compensation for improvements laid down in this section is

based on very uncertain grounds. Landlords have good reasons to suspect that the estimated cost exceeds the original outlay. The taluqdárs had stated their reasons for doubting the propriety of a section so vaguely worded, and His Honour the Lieutenant-Governor had recommended the addition of certain words in this section which might make it impossible for the estimated compensation to exceed the original outlay in any case. I think the recommendation of His Honour the Lieutenant-Governor may be adopted, and no loss or damage to the tenant can possibly be apprehended from the insertion of a proviso to that effect.

3. The provisions of sub-sections (3) and (4), section 29, making the landlord liable to

compensate the tenant, are, in my humble opinion, quite inexpedient. They will greatly discourage landlords from making improvements; for, when they come to know that they will have to pay a compensation to the tenant for any loss he may sustain when the improvement is made in his holding, besides the actual cost or outlay, they will naturally shrink from such an ungracious task. Ever since the annexation of the Province, tenants in Oudh have never shown themselves unwilling to allow their landlord to make improvements in their holdings, and have never apprehended from them any loss or damage, nor can evidence be obtained from the report of a Judicial or a Revenue Officer to show that such has ever been the case. Wells are usually sunk in May or June, when the heat is intense and water is at its lowest depth; and when there are no crops there can be no ground for the tenant complaining of any loss or damage.

The effect of an improvement cannot possibly be to impair the productive powers of land. The construction of wells cannot lead to a deterioration of the soil. Even if a well produces salt water, the tenant can use it in raising a tobacco crop and other crops of a similar nature to which irrigation with salt water is beneficial; but if he raises some other crop to the growth of which such water is not favourable, he need not use the water of such a well for purposes of irrigation. If sub-section (4) has been added in order to prevent the construction of an embankment which might possibly cause a loss to the tenant, it may be said that as a matter of fact embankments are seldom constructed in cultivated areas, and that, if constructed, they will tend to increase rather than diminish the productive powers of land. It is only at the repeated request of a large number of tenants that the landlord undertakes to construct an embankment, or he is compelled to construct one when the want of an embankment seems to him to be highly detrimental to cultivation. It must not be overlooked that, while the landlord is made liable to compensate the tenant for an accidental loss arising from any improvement he makes on his own land, the tenant, who has no right whatever in the land he cultivates, is not required to pay any compensation for any improvement made by him the effect of which is to impair the productive powers of the land comprised in his own holding or those of other tenants. In such cases the law affords no protection to the party which suffers from a tenant's improvement. Such losses are extremely improbable, and, if an improvement effected by the landlord in good faith causes accidental loss to the tenant, this cannot be sufficient ground for making the former liable to pay compensation to the latter. The landlord ought to be exempted from payment of such compensation in the same way and for the same reasons as the tenant is not made liable to pay any such compensation.

4. The Committee of the British Indian Association had submitted their objections to

the extension of the privileges of the statutory tenancy and the statutory enhancement to *pahikashts* or non-resident tenants. Their objections were sufficiently strong and could not justly be rejected or over-ruled—

firstly, because land is let to non-resident tenants in those cases only in which resident tenant cannot be obtained; and whenever a resident tenant desires to cultivate land in his own village, or a new tenant from a neighbouring village settles therein, the landlord is obliged to oust the non-resident and give the land to the resident or the incoming tenant, who undoubtedly possesses a preferential title;

secondly, because the *pahikasht* is prevented by local custom and the terms of the *Wajib-ul-arz* from getting water and manure for purposes of cultivation, nor is he allowed to remove those essentials of cultivation from the village in which he resides: he cannot therefore improve the productive powers of the land he cultivates;

thirdly, because it is impossible for the incoming tenant to settle in a new village unless and until he gets some land there for cultivation, nor can he afford to wait for seven years;

fourthly, because rent cannot be realized from a non-resident tenant with as much certainty as from a resident one. He may abandon the village in which he resides, leaving no assets wherefrom the rent due may be realized by a decree of the Court;

fifthly, because non-resident tenants cannot work in their fields with all the members of their family, male and female; while resident tenants cultivate their holdings with the assistance of all their male and female relatives;

sixthly, because resident tenants who have lived in the village for some generations should be supported and encouraged as they increase in numbers and it becomes necessary to extend the area of their cultivation. It would be a great hardship to them if the landlord could not give them the support they so urgently need.

5. The words "by registered document" in this section appear to be quite unnecessary,

Section 69.—Long leases.

considering that no right or title is intended to be conveyed thereby. Under the proposed law the tenant is entitled to hold for seven years, and, if he gets a longer lease, it need not be by a registered document; because, if no mention of the eighth year were made in the patta, the tenant could still legally retain his holding on the same rent with the consent of his landlord for one or more years; nor, as regards the stamp duty on the notice of ejectment, can the tenant enter into an engagement with his landlord for exemption from what is not payable to him. Such exemption has been especially provided for, and is the natural consequence of an eight years' lease, which need not, and should not, be registered.

The restriction as to registration will operate more injuriously to the tenant, who will find it extremely difficult to go a long way out of his village to get the document registered, while it will be highly inconvenient to landlords generally, and to taluqdárs especially, to repair to the Registrar's office for the purpose of registration. Under these circumstances tenants will rarely benefit by continuing to hold one year longer than the statutory period of seven years. They will lose the benefits of a whole year's cultivation; and the main object of the Bill in extending the period of their tenancy will thus be defeated. In my humble opinion registration should not be made compulsory, and the eight years' patta should be exempted from registration in the same way as seven years' pattas are exempted therefrom, or it may be made optional, that is, the parties concerned may or may not have the patta registered.

RANA SHANKAR BAKSH SINGH.

S. HARVEY JAMES,

Offg. Secy. to the Govt. of India.



The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, OCTOBER 2, 1886.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 24th September, 1886, and was referred to a Select Committee:—

NO. 24 OF 1886.

A Bill to provide for the Protection of Indigenous Tribes in Burma.

WHEREAS it is expedient to provide means for protecting Karens and other indigenous tribes in Burma from the intrusion of strangers into their villages; It is hereby enacted as follows:—

Short title, commencement and local extent.

1. (1) This Act may be called the Burma Indigenous Tribes Protection Act, 1886.

(2) It shall come into force at once; and

(3) It shall extend to such local areas within the limits of Lower Burma as the Local Government may from time to time, by notification in the official Gazette, specify in this behalf.

Definition of "indigenous tribes."

2. (1) The Karens are an indigenous tribe within the meaning of this Act.

(2) With the previous sanction of the Governor-General in Council, the Local Government, by notification in the official Gazette, may from time to time declare of any other class of persons in Lower Burma that that class is or forms part of an indigenous tribe, and may at any time cancel the declaration.

(3) While a declaration under sub-section (2) is in force, it shall be conclusive proof of the matter stated therein.

3. In this Act, unless there is something repugnant in the subject or context,—
Definitions of "village" and "prescribed."

(1) "village" means any collection of ten or more houses not being either a municipality to which the British Burma Municipal Act, 1874, VII of 1874, or the Burma Municipal Act, 1884, for the XVII of 1884, time being extends, or a town, village or hamlet in which a house-tax or a cess on houses is for the time being leviable under section 5 or section 6 of the Burma District Cesses and Rural Police Act, 1880; but it does not include a village of which members of indigenous tribes are not the majority of the residents; II of 1880.

(2) "prescribed" means prescribed by rules under this Act.

4. (1) If not fewer than half of the cultivating householders of a village desire to eject or exclude from the village a resident or intending resident thereof, they may record that desire in the prescribed manner.

(2) When the cultivating householders of a village have recorded under sub-section (1) their desire to eject or exclude a resident or intending resident, the prescribed authority may, in the prescribed manner, eject or exclude him from the village:

Provided that a resident or intending resident of a village shall not be ejected or excluded therefrom, if he—

- (a) is of the same indigenous tribe as the majority of the residents of the village, or
- (b) cultivates land within three miles of the village, or
- (c) has resided in the village for twelve years or upwards:

Provided also that a resident of a village who is ejected under this Act shall be entitled to compensation for any immoveable property belonging to him in the village.

5. (1) The Local Government may from time to time, with the previous sanction of the Governor-General in Council, make rules—

- (a) to define the mode in which the desire of the cultivating householders of a village to eject or exclude therefrom a resident or intending resident is to be ascertained and recorded;
- (b) to declare the authority for carrying into effect the recorded desire of the cultivating householders of a village to eject or exclude a resident or intending resident therefrom, and to prescribe the procedure to be followed by that authority in ejecting or excluding him;
- (c) to prescribe the mode in which the compensation to which an ejected resident is entitled under this Act is to be ascertained and given; and
- (d) generally to carry out the purposes of this Act.

(2) When making any rule under this Act the Local Government may direct that a breach of it shall be punished with fine which may extend to one hundred rupees, or with imprisonment which may extend to three months, or with both.

6. (1) The Local Government shall, before making rules under this Act, publish a draft of the proposed rules in such manner as may, in its opinion, be sufficient for the information of persons likely to be affected thereby.

(2) There shall be published with the draft a notice specifying a date at, or after which, the draft will be taken into consideration.

(3) The Local Government shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(4) A rule made under this Act shall not take effect until it has been published in the local official Gazette.

(5) The publication in that Gazette of a rule purporting to be made under this Act shall be conclusive proof that it has been duly made.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to provide for the ejection or exclusion in certain circumstances of strangers from village-sites occupied by Karens and other indigenous tribes of Burma.

2. It would seem that Burman, Shan or Chinese strangers occasionally settle in Karen villages and cause very great annoyance to the Karens, who, in some cases, from shyness or timidity, do not resist the intruders, whilst in others they have been goaded into acts of lawlessness. The missionaries, who know more of the Karens than any English or Burmah Government officers, are very persistent in urging that power must be taken to preserve the Karens, especially the wilder Karens in secluded tracts, from intruders. Mr. Crosthwaite, when officiating as Chief Commissioner of British Burma, proposed to issue rules providing for the ejection of intruders from Karen villages; but it was found on further consideration that no rules of the kind could be enforced without legal sanction. The present Chief Commissioner, sharing Mr. Crosthwaite's views has urged on the Government the necessity for legislation, in the absence of which he fears that the Karen and similar tribes may either be driven out of their settlements or resort to lawless means of getting rid of intruders.

3. In these circumstances, the present Bill has been prepared. Though of a somewhat exceptional nature, it appears to the Government of India to be warranted by the peculiarities of the relations of these indigenous tribes and their neighbours. Further, it is supported by the analogy of the provisions of section 4 of the Garo Hills Regulation, I of 1882, which prohibit the acquisition of interests in land in those hills by strangers except under special sanction.

4. The provisions of the Bill are very simple. Section 1, sub-section (3), empowers the Chief Commissioner to apply the proposed Act to such local areas as he may by notification prescribe, while section 3 defines the term village so as to restrict the operation of the proposed law to purely rural tracts. Section 4 declares the circumstances under which a resident or intending resident may be excluded or ejected from a village. These are that the majority of the residents of the village belong to some indigenous tribe and that not less than one-half of the cultivating householders of the village desire ejection or exclusion of the resident or intending resident, who must not be of the same tribe as the majority of the residents of the village, or cultivate land within three miles of the village or have resided in the village for twelve years or upwards. The section further provides for compensation to persons who have been compelled to vacate any land or house in a village in consequence of their ejection therefrom. Under section 5, the Chief Commissioner has power to make rules with the sanction of the Governor-General in Council prescribing the mode in which the desire of the cultivating householders of a village to eject or exclude any one therefrom is to be ascertained and recorded, empowering certain persons to eject or exclude persons in pursuance of the recorded desire and on behalf of the cultivating householders, and prescribing the procedure to be followed in such cases, and the mode in which compensation under the proposed Act is to be ascertained. The section further enables the Local Government to direct in any rule that a breach of it shall be punished with fine which may extend to one hundred rupees, or with imprisonment which may extend to three months, or with both. Lastly, section 6 contains the usual formal matter as to the procedure for making and publishing rules.

The 17th September, 1886.

C. P. ILBERT.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 24th September, 1886, and was referred to a Select Committee on the 30th idem:—

NO. 25 OF 1886.

A Bill to abolish Military Courts of Requests as established by Indian Military Law.

WHEREAS it is expedient to repeal that portion of the Indian Military Law which relates to Military Courts of Requests and to military tribunals having jurisdiction with respect to actions of a civil nature; It is hereby enacted as follows:—

1. The enactments mentioned in the schedule Repeal of enactments. hereto are hereby repealed to the extent specified in the third column of that schedule.

THE SCHEDULE.

ENACTMENTS REPEALED.

Number and year.	Subject or title.	Extent of repeal.
1	2	3

Acts of the Governor-General in Council.

Act XI of 1841.	Military Courts of Requests for Native Officers and Soldiers.	So far as it has not been repealed.
Act XII of 1842.	Regulation of Military Bázars and Liabilities of Camp-followers.	So far as it has not been repealed.
Act XXXIII of 1852.	Enforcement of judgments in places beyond the jurisdiction of the Courts pronouncing the same.	So far as it has not been repealed.

Number and year.	Subject or title.	Extent of repeal.
1	2	3

Acts of the Governor-General in Council—contd.

Act III of 1859.	Conferment of Civil Jurisdiction in certain cases on Cantonment Joint Magistrates.	So far as it has not been repealed.
Act XII of 1868.	Suspension of operation of section 17, Act XI, 1841.	The whole.
Act III of 1880.	Cantonments	Section 8.
Act XIV of 1882.	Code of Civil Procedure.	Clause (b) of section 6.

Act of the Governor of Madras in Council.

Act I of 1866.	Cantonments	Section 9, down to and inclusive of the words "provided also that."
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Bombay Regulation.

XXII of 1827.	Military Authority	The following portions so far as they have not been repealed, namely:— (a) the first clause of section 3; (b) the first twenty-seven words of the second clause of that section; (c) section 7; and (d) section 32.
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STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is, by repealing that portion of Indian military law which relates to Military Courts of Requests, to make the provisions of the Army Act, 1881, respecting Courts of Requests in India (44 & 45 Vict., c 58, ss. 148-151), apply to Her Majesty's Indian forces, and thus to place those forces, with respect to indebtedness, in the same position as the rest of the British Army. In this respect the law enacted nearly half a century ago for the Indian army is more severe than Parliament has seen fit to enact for the other branches of Her Majesty's regular forces or than the Council of the Governor-General would now enact.

The 22nd September, 1886.

G. CHESNEY.

S. HARVEY JAMES,

Offg. Secy. to the Govt. of India.



The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, OCTOBER 9, 1886.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 24th September, 1886, and was referred to a Select Committee:—

NO. 24 OF 1886.

A Bill to provide for the Protection of Indigenous Tribes in Burma.

WHEREAS it is expedient to provide means for protecting Karens and other indigenous tribes in Burma from the intrusion of strangers into their villages; It is hereby enacted as follows:—

Short title, commencement and local extent.

1. (1) This Act may be called the Burma Indigenous Tribes Protection Act, 1886.

(2) It shall come into force at once; and

(3) It shall extend to such local areas within the limits of Lower Burma as the Local Government may from time to time, by notification in the official Gazette, specify in this behalf.

Definition of "indigenous tribes."

2. (1) The Karens are an indigenous tribe within the meaning of this Act.

(2) With the previous sanction of the Governor-General in Council, the Local Government, by notification in the official Gazette, may from time to time declare of any other class of persons in Lower Burma that that class is or forms part of an indigenous tribe, and may at any time cancel the declaration.

(3) While a declaration under sub-section (2) is in force, it shall be conclusive proof of the matter stated therein.

3. In this Act, unless there is something repugnant in the subject or context,—

(1) "village" means any collection of ten or more houses not being either a municipality to which the British Burma Municipal Act, 1874, VII of 1874, or the Burma Municipal Act, 1884, for the time being extends, or a town, village or hamlet in which a house-tax or a cess on houses is for the time being leviable under section 5 or section 6 of the Burma District Cesses and Rural Police Act, 1880; but it does not include a village of which members of indigenous tribes are not the majority of the residents; II of 1880.

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- (d) generally to carry out the purposes of this Act.

(2) When making any rule under this Act the Local Government may direct that a breach of it shall be punished with fine which may extend to one hundred rupees, or with imprisonment which may extend to three months, or with both.

6. (1) The Local Government shall, before making rules under this Act, publish a draft of the proposed rules in such manner as may, in its opinion, be sufficient for the information of persons likely to be affected thereby.

(2) There shall be published with the draft a notice specifying a date at, or after which, the draft will be taken into consideration.

(3) The Local Government shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

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3. In these circumstances, the present Bill has been prepared. Though of a somewhat exceptional nature, it appears to the Government of India to be warranted by the peculiarities of the relations of these indigenous tribes and their neighbours. Further, it is supported by the analogy of the provisions of section 4 of the Garo Hills Regulation, I of 1882, which prohibit the acquisition of interests in land in those hills by strangers except under special sanction.

4. The provisions of the Bill are very simple. Section 1, sub-section (3), empowers the Chief Commissioner to apply the proposed Act to such local areas as he may by notification prescribe, while section 3 defines the term village so as to restrict the operation of the proposed law to purely rural tracts. Section 4 declares the circumstances under which a resident or intending resident may be excluded or ejected from a village. These are that the majority of the residents of the village belong to some indigenous tribe and that not less than one-half of the cultivating householders of the village desire ejection or exclusion of the resident or intending resident, who must not be of the same tribe as the majority of the residents of the village, or cultivate land within three miles of the village or have resided in the village for twelve years or upwards. The section further provides for compensation to persons who have been compelled to vacate any land or house in a village in consequence of their ejection therefrom. Under section 5, the Chief Commissioner has power to make rules with the sanction of the Governor-General in Council prescribing the mode in which the desire of the cultivating householders of a village to eject or exclude any one therefrom is to be ascertained and recorded, empowering certain persons to eject or exclude persons in pursuance of the recorded desire and on behalf of the cultivating householders, and prescribing the procedure to be followed in such cases, and the mode in which compensation under the proposed Act is to be ascertained. The section further enables the Local Government to direct in any rule that a breach of it shall be punished with fine which may extend to one hundred rupees, or with imprisonment which may extend to three months, or with both. Lastly, section 6 contains the usual formal matter as to the procedure for making and publishing rules.

The 17th September, 1886.

C. P. ILBERT.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 24th September, 1886, and was referred to a Select Committee on the 30th idem:—

NO. 25 OF 1886.

A Bill to abolish Military Courts of Requests as established by Indian Military Law.

WHEREAS it is expedient to repeal that portion of the Indian Military Law which relates to Military Courts of Requests and to military tribunals having jurisdiction with respect to actions of a civil nature; It is hereby enacted as follows:—

1. The enactments mentioned in the schedule hereto are hereby repealed to the extent specified in the third column of that schedule.

THE SCHEDULE.

ENACTMENTS REPEALED.

Number and year.	Subject or title.	Extent of repeal.
1	2	3

Acts of the Governor-General in Council.

Act XI of 1841.	Military Courts of Requests for Native Officers and Soldiers.	So far as it has not been repealed.
Act XII of 1842.	Regulation of Military Bázars and Liabilities of Camp-followers.	So far as it has not been repealed.
Act XXXIII of 1852.	Enforcement of judgments in places beyond the jurisdiction of the Courts pronouncing the same.	So far as it has not been repealed.

Number and year.	Subject or title.	Extent of repeal.
1	2	3

Acts of the Governor-General in Council—contd.

Act III of 1859.	Conferment of Civil Jurisdiction in certain cases on Cantonment Joint Magistrates.	So far as it has not been repealed.
Act XII of 1868.	Suspension of operation of section 17, Act XI, 1841.	The whole.
Act III of 1880.	Cantonments	Section 8.
Act XIV of 1882.	Code of Civil Procedure.	Clause (b) of section 6.

Act of the Governor of Madras in Council.

Act I of 1866.	Cantonments	Section 9, down to and inclusive of the words "provided also that."
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Bombay Regulation.

XXII of 1827.	Military Authority	The following portions so far as they have not been repealed, namely:— (a) the first clause of section 3; (b) the first twenty-seven words of the second clause of that section; (c) section 7; and (d) section 32.
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STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is, by repealing that portion of Indian military law which relates to Military Courts of Requests, to make the provisions of the Army Act, 1881, respecting Courts of Requests in India (44 & 45 Vict., c. 58, ss. 148-151), apply to Her Majesty's Indian forces, and thus to place those forces, with respect to indebtedness, in the same position as the rest of the British Army. In this respect the law enacted nearly half a century ago for the Indian army is more severe than Parliament has seen fit to enact for the other branches of Her Majesty's regular forces or than the Council of the Governor-General would now enact.

The 22nd September, 1886.

G. CHESNEY.

S. HARVEY JAMES,

Offg. Secy. to the Govt. of India.



The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, OCTOBER 16, 1886.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 24th September, 1886, and was referred to a Select Committee on the 30th idem:—

NO. 25 OF 1886.

A Bill to abolish Military Courts of Requests as established by Indian Military Law.

WHEREAS it is expedient to repeal that portion of the Indian Military Law which relates to Military Courts of Requests and to military tribunals having jurisdiction with respect to actions of a civil nature; It is hereby enacted as follows:—

1. The enactments mentioned in the schedule hereto are hereby repealed to the extent specified in the third column of that schedule.

THE SCHEDULE.

ENACTMENTS REPEALED.

Number and year.	Subject or title.	Extent of repeal.
1	2	3

Acts of the Governor-General in Council.

Act XI of 1841.	Military Courts of Requests for Native Officers and Soldiers.	So far as it has not been repealed.
Act XII of 1842.	Regulation of Military Bázars and Liabilities of Camp-followers.	So far as it has not been repealed.
Act XXXIII of 1852.	Enforcement of judgments in places beyond the jurisdiction of the Courts pronouncing the same.	So far as it has not been repealed.

Number and year.	Subject or title.	Extent of repeal.
1	2	3

Acts of the Governor-General in Council—contd.

Act III of 1859.	Conferment of Civil Jurisdiction in certain cases on Cantonment Joint Magistrates.	So far as it has not been repealed.
Act XII of 1868.	Suspension of operation of section 17, Act XI, 1841.	The whole.
Act III of 1880.	Cantonments ...	Section 8.
Act XIV of 1882.	Code of Civil Procedure.	Clause (b) of section 6.

Act of the Governor of Madras in Council.

Act I of 1866.	Cantonments ...	Section 9, down to and inclusive of the words "provided also that."
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Bombay Regulation.

XXII of 1827.	Military Authority ...	The following portions so far as they have not been repealed, namely:— (a) the first clause of section 3; (b) the first twenty-seven words of the second clause of that section; (c) section 7; and (d) section 32.
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STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is, by repealing that portion of Indian military law which relates to Military Courts of Requests, to make the provisions of the Army Act, 1881, respecting Courts of Requests in India (44 & 45 Vict., c. 58, ss. 148-151), apply to Her Majesty's Indian forces, and thus to place those forces, with respect to indebtedness, in the same position as the rest of the British Army. In this respect the law enacted nearly half a century ago for the Indian army is more severe than Parliament has seen fit to enact for the other branches of Her Majesty's regular forces or than the Council of the Governor-General would now enact.

The 22nd September, 1886.

G. CHESNEY.

S. HARVEY JAMES,

Offg. Secy. to the Govt. of India.



The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, OCTOBER 23, 1886.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 21st October, 1886:—

NO. 26 OF 1886.

A Bill to regulate the supply of electricity for lighting and other purposes.

WHEREAS it is expedient to regulate the supply of electricity for lighting and other purposes; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called the Electricity Supply Act, 1887.

(2) It shall extend to the whole of British India; and

(3) It shall come into force at once.

2. In this Act, unless there is something repugnant in the subject or context,—

(1) "electricity" includes galvanism, magnetism, magneto-electricity and electro-magnetism:

(2) "telegraph", "message", "telegraph line", "post", "telegraph authority" and "local authority" have the meanings respectively assigned to those expressions in the Indian Telegraph Act, 1885: and

(3) "purpose" includes any purpose except the transmission of a message or the use of electricity in medical treatment.

3. Save as provided in this Act, electricity shall not be supplied for any price by any person for any purpose without a license.

from the Governor-General in Council authorizing the person in that behalf.

4. (1) The Governor-General in Council may from time to time license any person to supply electricity for any purpose, and in any local area, specified in the license.

(2) The license may prescribe the duties of the licensee and provide for the revocation of the license on his failure to perform any of those duties, and generally may contain such regulations and conditions as the Governor-General in Council thinks expedient.

(3) By a license granted under this section the Governor-General in Council may, subject to such conditions as he thinks fit to impose, confer on the licensee, with respect to the placing of appliances and apparatus for the supply of electricity, any of the powers which the telegraph authority possesses under the Indian Telegraph Act, 1885, with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained by the Government or to be so established or maintained.

(4) The Governor-General in Council may from time to time amend, add to or cancel any of the regulations and conditions contained in a license, and withdraw any of the powers conferred by a license or impose amended or additional conditions with respect to the exercise of those powers.

5. (1) Section 3 shall not apply to any person supplying electricity for any purpose in any local area at the time of the passing of this Act so far as regards the supply of electricity for that purpose within that area.

(2) If any question arises with respect to the purpose or the local area for or in which electricity was being supplied at that time, it shall be decided by an authority to be appointed by the Governor-General in Council in that behalf, and the decision of that authority on the question shall be final.

XIII of 1885.

6. (1) Notwithstanding anything in the last foregoing section, the Governor-General in Council may, on the application of any person supplying electricity for any purpose in any local area at the time of the passing of this Act, grant to the person a license for that purpose in that area under the provisions of section 4.

(2) Where a license is granted under sub-section (1), it shall supersede any engagement between the person to whom it is granted and any local authority with respect to the conditions on which electricity may be supplied by that person for the purpose, and in the local area, specified in the license.

Penalty for supplying electricity without license or contravening license.

7. If a person does either of the following things, namely,—

- (a) being a person to whom section 3 is applicable, supplies electricity for a price without a license, or,
- (b) having a license under this Act, commits or suffers to be committed a breach of any duty prescribed in the license or of any regulation or condition contained therein,

he shall be punished with fine which may extend to one thousand rupees, and, in the case of a continuing offence, with a further fine which may extend to two hundred rupees for every day during which the electricity is supplied or the breach of the duty, regulation or condition continues.

8. (1) The Governor-General in Council may from time to time make such rules as he thinks expedient for protecting the public in person and property from injury by reason of contact with, or the proximity of, appliances or apparatus used in the supply of electricity, and for preventing telegraph lines from being injuriously affected by any of those appliances or apparatus.

(2) A rule under this section may apply to the appliances and apparatus of a person not having

a license under this Act as well as to those of a person having a license thereunder.

(3) In making a rule under this section, the Governor-General in Council may direct that a breach of it shall be punishable with fine which may extend to one thousand rupees and, in the case of a continuing breach, with a further fine which may extend to two hundred rupees for every day during which the breach continues.

9. (1) The Governor-General in Council shall, before making rules under the last foregoing section, publish, in such manner as he deems sufficient, a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(3) The Governor-General in Council shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(4) The publication in the *Gazette of India* of a rule purporting to be made under the last foregoing section shall be conclusive proof that it has been duly made.

(5) Rules under that section may from time to time be amended, added to or cancelled by the Governor-General in Council.

10. Nothing in this Act shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence under section 7 or against a rule under section 8, or from being liable under that other law to any other or higher punishment or penalty than that provided by section 7 or a rule under section 8:

Provided that a person shall not be punished twice for the same offence.

STATEMENT OF OBJECTS AND REASONS.

THE primary object of this Bill is to empower the Governor-General in Council to make rules (a) for protecting the public in person and property from injury by reason of contact with, or the proximity of, appliances or apparatus used in the supply of electricity for lighting, and (b) for preventing telegraph-lines from being injuriously affected by any of those appliances or apparatus.

2. The danger to the public from electric light connections arises from the fact that currents of great strength are used in the production of the light, the currents being powerful enough to cause death to any person, or set fire to any inflammable material, coming in contact with the wires while the currents are passing, that is to say, while the lamps are being used. Protection may be afforded either by placing these wires or connections in such a position that contact with them is impossible, or by so covering them with insulating material that contact with them is innocuous.

Interference with telegraph and telephone signals is caused by obstructive currents being induced in the telegraph and telephone wires when the electric light wires pass within a certain distance of them. The remedy is to arrange that the electric light wires shall be placed sufficiently far off. It is impossible of course to determine what the safe distance is without knowing the strength of the current employed for the electric light, which again varies with the number of lamps in circuit, but the distance can be determined from time to time with reference to the maximum current to be used in any particular local area.

3. A company desiring to supply electricity in any local area for any purpose must, if the company was not supplying it in that area for that purpose at the time of the passing of the Act, obtain a license from the Governor-General in Council. By this license the

Governor-General in Council may impose such regulations and conditions as he thinks expedient, and confer on the licensee, with respect to the placing of appliances and apparatus for the supply of electricity, any of the powers which the telegraph-authority possesses under the Indian Telegraph Act, 1885, with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained by the Government or to be so established or maintained.

Companies which were supplying electricity in any local area for any purpose at the time of the passing of the Act may elect to continue supplying it without a license, and therefore without the obligations which may be imposed, or the privileges which may be conferred, by a license.

The 21st October, 1886.

T. C. HOPE.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Report of the Select Committee on the Bill to amend the law relating to Civil Courts in Bengal, the North-Western Provinces and Assam was presented to the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 21st October, 1886:—

Preliminary Report on the Bengal Civil Courts Bill, 1881.

THE Bill to amend the law relating to Civil Courts in Bengal, the North-Western Provinces and Assam was introduced into the Council of the Governor-General by the Hon'ble Mr. Stokes in 1881, was referred to a Select Committee and was circulated for opinion, but its further progress was suspended in consequence of a proposal to establish appellate benches in Bengal. That proposal having been abandoned for the present, the opinions on the Bill of 1881 have been examined, and most of the recommendations in them incorporated in the amended copy of the Bill which accompanies this Report.

The few recommendations which have not been adopted have reference to the relation of Courts of Small Causes to District Courts, and will be best considered in connection with the Provincial Small-Cause Courts Bill, 1885. I propose therefore to move at the next meeting of Council that all members of the Select Committee appointed to consider and report on that Bill who are residents of, or are or have been officially connected with, Bengal, the North-Western Provinces or Assam, be added to the Select Committee on the Courts Bill to which this Preliminary Report relates.

2. The following portions of the amended Bill seem to call for remark:—

- (a) *Section 5.*—A sub-section has been added on the advice of the Government of the North-Western Provinces and Oudh for the purpose of removing any doubt there may be as to the competence of a Local Government to appoint a Judge of a Court of Small Causes to be a Subordinate Judge, or to appoint a District Judge or Subordinate Judge to discharge temporarily the functions of another District Judge or Subordinate Judge, as the case may be, in addition to the performance of his own duties.
- (b) *Section 7.*—The powers vested in the High Courts at Fort William and Allahabad by the Statute 24 & 25 Vic., cap. 104, section 15, seem to render it unnecessary to provide in this and other sections of the Bill that a District Judge is in all matters connected with the administration of the Courts to act under the control of the High Court, the District Judge being already in those matters under the obligation of obeying any instructions which the High Court may be pleased to issue.
- (c) *Section 8.*—It has been objected that the provision of the Act of 1871 which requires an Additional Judge or Subordinate Judge in charge of the office of a District Judge to discharge “such of the current duties thereof as are connected with the filing of suits and appeals, the issue of processes and the like functions,” is too indefinite, and has in practice resulted in inconvenience and loss to parties. An attempt is made in sub-section (2) of section 8 of the revised Bill to define more particularly the powers which an Additional Judge or Subordinate Judge in charge of the office of a District Judge may exercise.
- (d) *Section 9.*—Objection has been taken by the High Court for the North-Western Provinces to the words “on leave” in section 9 of the Act of 1871, and to the words in the same section which empower the District Judge to transfer cases only to his own Court or to the Court of a Subordinate Judge. The High Court points out that a Subordinate Judge may be absent from his district otherwise than on leave, as, for instance, on deputation to another district, and that, where, as occasionally happens, the Court of a Subordinate Judge is for any tract of country the Court of lowest jurisdiction, it may be convenient to transfer cases from his Court to that of a Munsif. The section has in these respects been amended, and two sub-sections (3) and (4) have been added, the former being supplementary to the amendment of sub-section (1), and the latter designed to remove a difficulty which has been felt in the North-Western Provinces.
- (e) *Section 10.*—The expression of this section, which was inaccurate in the Act of 1871, has been amended in the manner proposed by Mr. Justice Prinsep.
- (f) *Section 11.*—This section has been modified in accordance with the recommendations of the Lieutenant-Governor of Bengal, the Chief Commissioner of Assam and Mr. Justice Prinsep.

- (g) *Section 16.*—A sub-section has, on the suggestion of Mr. Justice Prinsep, been added to meet the case of officers in the territories referred to in section 11 who dispose of civil business while on tour at any place within the local limits of their jurisdiction.
- (h) *Section 17.*—On the suggestion of Mr. Justice Field, a sub-section has been added to the effect that a judicial act shall not be invalid by reason only of its having been done on a holiday.
- (i) *Section 18.*—This section has been so drawn as to remove difficulties experienced in Bengal, the North-Western Provinces and Assam in the working of the corresponding section of the Act of 1871.
- (j) *Section 21.*—A sub-section has been added with reference to the cases at 13 B. L. R. 376; 10 B. L. R., App., 30; 19 W. R. 201; and 8 C. L. R. 6.
- (k) *Section 22.*—Sub-section (2) of this section has been re-drawn with advertence to the cases at 18 W. R. (F. B.) 261; 18 W. R. 316; and 19 W. R. 131.

Sub-section (3) has been added on the suggestion of Mr. Justice Prinsep.

- (l) *Section 23.*—The case at I. L. R. 7 All. 775 suggests an expansion of this section.
- (m) *Section 25.*—Sub-section (1) will empower the District Judge to transfer appeals from orders of Munsifs, as well as from their decrees, to Subordinate Judges.

Sub-section (2) has, on the suggestion of Mr. Justice Prinsep, been so drawn as to enable the District Judge to transfer to any other competent Court under his control an appeal withdrawn from the Court of a Subordinate Judge.

Sub-section (3) is suggested by the cases at 16 W. R. 235 and 18 W. R.

292.

- (n) *Section 26.*—This section has been amended in several particulars. It is proposed, on the suggestion of Mr. Justice Field, that the order of the High Court may be either general or special; on the suggestion of Mr. Justice Prinsep, that the High Court may authorise a Subordinate Judge or Munsif to take cognizance of the proceedings mentioned in the section; on the suggestion of the Government of the North-Western Provinces and Oudh, that references by Collectors under section 322C of the Code of Civil Procedure should be added to the list of proceedings; and on the suggestion of the same Government and of Mr. Justice Field and Mr. Justice Maclean, that several of the proceedings specified in section 26 of the Bill of 1881 should be excluded therefrom.

- (o) *Section 27.*—On the suggestion of Mr. Justice Prinsep, it is proposed that appeals from orders passed by Subordinate Judges in proceedings mentioned in section 26 shall, when appeals are permitted, lie to the High Court.

- (p) *Section 34.*—With respect to section 35 of the Bill of 1881, Mr. C. J. Daniell, District Judge of Moradabad, recorded the following remarks:—

“I consider it essential to the efficiency of the ministerial officers of the subordinate Civil Courts in a judgeship that a stream of promotion should be maintained from the lowest to the highest grade of these officials throughout the judgeship. If this is secured, every hard-working man knows that there are several appointments to which he can aspire, the field for his promotion is widened, and he is more encouraged to do his work well than if he had only to look to the rare vacancies in a single munsifi for advancement. On the other hand, the Judge can promote any man from any one of several situations to any other that he may be qualified for in the whole judgeship, and a stimulus is provided to efficient and industrious work which is entirely absent if the Judge can promote no one but the officials of his own office, or if, in order to promote a deserving man in a munsifi, he is obliged to place him over the heads of other men in his own office, without being at the same time able to provide any of his own officials with a step on promotion in any of the munsifs subordinate to him.

“There can, I think, be no doubt that better men are obtainable and better work done in a wide than in a narrow field of work; but this section (35), as it stands, reduces the area over which a subordinate official's career extends within the most confined limits.

“In former times, when the subordinate Civil Courts were never inspected, something might be said in favour of allowing Munsifs to nominate and promote the officials of their own Courts; but in these days Munsifs are frequently changed, while Judges are seldom changed, and a judgeship is becoming more and more the unit of judicial administration. It is as well that this should be so, for such a condition is an incentive to a more careful supervision on the part of a Judge over his subordinates, and consequently to better work on the part of all below him. This incentive, however, will fail to act if the area of nomination and selection in a judgeship is confined to single munsifs instead of extending to all the Courts in the judgeship.”

The Government of the North-Western Provinces expressed concurrence in Mr. Daniell's remarks, as the Government of Bengal did in similar remarks recorded by Mr. Justice Field.

- (q) *Section 35.*—This section provides for the case of Civil Court amins and the joint process-serving establishments now maintained throughout Bengal and the North-Western Provinces under the superintendence of central nazirs and the control of the District Judge.

- (r) *Section 38.*—The addition to this section was suggested by Mr. Justice Oldfield.

- (s) *Section 40.*—This section seems to be required for the purposes of applications under section 108 of the Code of Civil Procedure and other proceedings not referred to in sections 623 and 649 of that Code.

3. The publication ordered by the Council has been made as follows :—

<i>In English.</i>		<i>Date.</i>
<i>Gazette.</i>		
Gazette of India	...	8th, 15th and 22nd October, 1881.
Calcutta Gazette	...	19th and 26th October, and 2nd November, 1881.
North-Western Provinces and Oudh Government Gazette	...	15th, 22nd and 29th October, 1881.
Assam Gazette	...	5th, 12th and 19th November, 1881.

In the Vernacular.

<i>Province.</i>	<i>Language.</i>	<i>Date.</i>
North-Western Provinces and Oudh	Urdu	26th November, and 3rd and 10th December, 1881.

4. I am of opinion that the Bill as amended should be re-published.

The 19th October, 1886.

C. P. ILBERT.

No. II.
THE BENGAL CIVIL COURTS
BILL, 1881.

CONTENTS.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title, local extent, commencement and application.
2. Repeal.

CHAPTER II.

CONSTITUTION OF CIVIL COURTS.

3. Number of District Judges and Subordinate Judges.
4. Number of Munsifs.
5. Vacancies in District or Subordinate Judgeships.
6. Vacancies in Munsifships.
7. Additional Judges.
8. Temporary charge of District Judgeship.
9. Transfer of proceedings on vacation of office of Subordinate Judge.
10. Temporary charge of Munsifship.
11. Power to confer judicial powers on officers in Chutiá Nágpur, Jalpaigori, Darjiling and Assam.
12. Control of Civil Courts.
13. Present Judges to be deemed duly appointed.
14. Seals of Courts.
15. District Judges, Additional Judges, Subordinate Judges and Munsifs to be deemed Civil Courts.
16. Place of sitting of Courts.
17. Vacation.

CHAPTER III.

ORDINARY JURISDICTION.

18. Power to fix local limits of jurisdiction.
19. Extent of original jurisdiction of District Judge or Subordinate Judge.
20. Extent of jurisdiction of Munsif.
21. Appeals from District Judges and Additional Judges.
22. Appeals from Subordinate Judges and Munsifs.

SECTIONS.

23. Certain decisions to be according to Native law.
24. Judges not to try suits in which they are interested.

CHAPTER IV.

SPECIAL JURISDICTION.

25. Power to transfer to Subordinate Judges appeals from Munsifs.
26. Exercise by Subordinate Judge or Munsif of jurisdiction of District Court in certain proceedings.
27. Disposal of proceedings referred to in last foregoing section.
28. Power to invest Subordinate Judges and Munsifs with Small Cause Court jurisdiction.

CHAPTER V.

MISFEAZANCE.

29. Suspension or removal of Judges by Local Government.
30. Suspension of Subordinate Judge by High Court.
31. Suspension or removal of Munsif by High Court.
32. Suspension of Munsif by District Judge.

CHAPTER VI.

MINISTERIAL OFFICERS.

33. Appointment and removal of ministerial officers of District Judges and Additional Judges.
34. Appointment and removal of ministerial officers of Subordinate Judges and Munsifs.
35. Appointment and removal of ministerial officers on joint establishments.
36. General powers of District Judge.
37. Saving of penal and other consequences under other laws.
38. Transfer of ministerial officers.
39. Recovery of fines.

CHAPTER VII.

SUPPLEMENTAL PROVISIONS.

40. Continuance of proceedings of abolished Courts.
41. Powers exerciseable from time to time.

*The Bengal Civil Courts Bill, 1886.**(Chapter I.—Preliminary.—Sections 1-2.—Chapter II.—Constitution of Civil Courts.—Sections 3-8.)***No. II.**

A Bill to consolidate and amend the law relating to Civil Courts in Bengal, the North-Western Provinces and Assam.

WHEREAS it is expedient to consolidate and amend the law relating to Civil Courts in Bengal, the North-Western Provinces and Assam; It is hereby enacted as follows:—

CHAPTER I.**PRELIMINARY.**

[Act VI of 1871, s. 1.] Short title, local extent, commencement and application.

1. (1) This Act may be called the Bengal Civil Courts Act, 1887.

(2) It extends to the territories for the time being respectively administered by the Lieutenant-Governor of Bengal, the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioner of Assam, except such portions of those territories as for the time being are not subject to the ordinary civil jurisdiction of the High Courts and except the Jhānsi Division; and

(3) It shall come into force on the first day of April, 1887.

(4) Except this section and sections 17, 23, 28, 40 and 41, nothing in this Act applies to Courts of Small Causes established under the Provincial Small Cause Courts Act, 1887.

VI of 1871. 2. (1) The Bengal Civil Courts Act, 1871, and Act No. XIX of 1877 (to enable certain District Judges to suspend and remove certain ministerial officers, and for other purposes), section 1, are hereby repealed:

(2) But all appointments, nominations, rules and orders made, jurisdiction and powers conferred, and lists published under the Bengal Civil Courts Act, 1871, or any enactment thereby repealed, shall be deemed to be respectively made, conferred and published under this Act; and

(3) Any enactment or document referring to the Bengal Civil Courts Act, 1871, or to any enactment thereby repealed, shall be construed to refer to this Act or to the corresponding portion thereof.

CHAPTER II.**CONSTITUTION OF CIVIL COURTS.**

[Act VI of 1871, ss. 3 & 4.]

3. The Local Government may reduce, and, with the previous sanction of the Governor-General in Council, increase, the number of District Judges and Subordinate Judges now fixed.

[Act VI of 1871, s. 4.]

4. The Local Government may, subject to the control of the Governor-General in Council, alter the number of Munsifs now fixed:

Provided that, except in the case of Munsifs of a grade the salary of which does not exceed two hundred and fifty rupees per mensem, an increase of the number of Munsifs now fixed shall not be made by the Local Government without the previous sanction of the Governor General in Council.

5. (1) Whenever the office of District Judge or Subordinate Judge is vacant by reason of the death, resignation or removal of the Judge or other cause, or whenever the Governor General in Council has sanctioned an increase of the number of District Judges or Subordinate Judges, the Local Government shall fill up the vacancy or appoint the additional District Judges or Subordinate Judges, as the case may be.

(2) Nothing in this section shall be construed to prevent a Local Government from appointing any Judge of a Court of Small Causes to be also a Subordinate Judge, or from appointing a District Judge or Subordinate Judge to discharge, for such period as it thinks fit, in addition to the functions devolving on him as such District Judge or Subordinate Judge, all or any of the functions of another District Judge or Subordinate Judge, as the case may be.

6. (1) Whenever the office of Munsif is vacant, or whenever the Local Government increases the number of Munsifs, the High Court shall nominate such person as it thinks fit to be a Munsif, and the Local Government shall appoint him accordingly.

(2) The Local Government may, with the previous sanction of the Governor General in Council, make rules as to the qualifications of persons to be appointed to the office of Munsif.

(3) When rules have been made under subsection (2), a person shall not be nominated under subsection (1) unless he possesses the qualifications required by the rules.

7. (1) When the business pending before any District Judge requires the aid of Additional Judges for its speedy disposal, the Local Government may, upon the recommendation of the High Court, and with the previous sanction of the Governor General in Council, appoint such Additional Judges as may be requisite.

(2) Additional Judges so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to them, and, in the discharge of those functions, they shall exercise the same powers and be subject to the same control as the District Judge.

8. (1) In the event of the death, resignation or removal of the District Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held, the Additional Judge, or, if an Additional Judge is not attached to the Court, the senior Subordinate Judge present at the place where the office of the District Judge is situate, shall, without relinquishing his ordinary duties, assume charge of that office, and shall continue in charge thereof until the office is resumed by the District Judge or assumed by an officer duly appointed thereto.

(2) While in charge of the office of the District Judge, the Additional Judge or Subordinate Judge, as the case may be, may, subject to any rules which the High Court may make in this behalf, exercise any of the powers of the District

The Bengal Civil Courts Bill, 1886.
(Chapter II.—Constitution of Civil Courts.—Sections 9-17.)
(Chapter III.—Ordinary Jurisdiction.—Section 18.)

Judge with respect to the admission of plaints, applications and appeals, the issue and stay of process before judgment or in execution of a decree or order, and the transfer of suits and other proceedings.

Act VI of
1871, s. 9.]

9. (1) In the event of the death, resignation or removal of a Subordinate Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held, the District Judge may transfer all or any of the proceedings pending in the Court of the Subordinate Judge either to his own Court or to any Court under his control competent to dispose of them.

(2) Proceedings transferred under this section shall be disposed of as if they had been instituted in the Court to which they are so transferred.

(3) Notwithstanding anything in section 25 of the Code of Civil Procedure, if a suit of which the amount or value of the subject-matter exceeds fifty rupees is transferred to the Court of a Munsif under this section from the Court of a Subordinate Judge exercising with respect thereto the jurisdiction of a Judge of a Court of Small Causes, the Court of the Munsif shall not, for the purposes of the suit, be deemed to be a Court of Small Causes.

(4) For the purposes of applications which are not pending in the Court of the Subordinate Judge on the occurrence of an event referred to in sub-section (1), and with respect to which that Court has exclusive jurisdiction, the District Judge may exercise all or any of the jurisdiction of that Court.

Act VI of
1871, s. 9.]

10. (1) A District Judge, on the occurrence within the local limits of his jurisdiction of any vacancy in the office of Munsif, may appoint such person as he thinks fit to act in the office until that person is relieved by a Munsif appointed under section 6 or his appointment is cancelled by the District Judge.

(2) The District Judge shall forthwith report to the High Court the occurrence of every such vacancy and the making and cancelling of every such appointment.

Act VI of
1871, s. 10.]

11. (1) The Local Government may invest with the powers of any Court under this Act any officer in the Chutiá Nágpur Division, or in the Jalpaigori or Darjiling Division, or in any part of the territories administered by the Chief Commissioner of Assam except the district of Silhat, or in any other part of the territories to which this Act extends, and to which the Governor-General in Council has, by notification in the official Gazette, declared this section to apply.

(2) Nothing in sections 3 to 10 (both inclusive) or sections 30 to 39 (both inclusive) applies to any officer so invested, but all the other provisions of this Act shall apply to him so far as those provisions can be made applicable.

12. Subject to the superintendence of the High Court, the District Judge shall control all the Civil Courts within the local limits of his jurisdiction. [Act VI of 1871, s. 11.]

13. Appointments of District Judges, Additional Judges, Subordinate Judges and Munsifs made before the commencement of this Act shall be deemed to have been made in accordance with law. [Act VI of 1871, s. 12.]

14. Every Court under this Act shall use a seal of such form and dimensions as are for the time being prescribed by the Local Government. [Act VI of 1871, s. 14.]

15. Every District Judge, Additional Judge, Subordinate Judge and Munsif under this Act shall be deemed to be a Civil Court within the meaning of the Code of Civil Procedure and of this Act. [Act VI of 1871, s. 15.]

16. (1) The Local Government may, by notification in the official Gazette, fix and alter the place or places at which any Court under this Act is to be held. [Act VI of 1871, s. 16.]

(2) All such places now fixed shall be deemed to be fixed under this Act.

(3) Where the place at which a Court under this Act is to be held has not been fixed, the Court may be held at any place within the local limits of its jurisdiction.

17. (1) Subject to such orders as may be issued by the Governor-General in Council, the High Court shall prepare a list of days to be observed in each year as close holidays in the Courts subordinate thereto. [Act VI of 1871, s. 17.]

(2) The list shall be published in the local official Gazette.

(3) A judicial act done by a Civil Court on a day specified in the list shall not be invalid by reason only of its having been done on that day.

CHAPTER III.

ORDINARY JURISDICTION.

18. (1) The Local Government shall fix, and may vary, the local limits of the jurisdiction of any Court under this Act. [Act VI of 1871, s. 18.]

(2) If the same local jurisdiction is assigned to two or more Subordinate Judges or to two or more Munsifs, the District Judge may assign to each of them such civil business cognizable by the Subordinate Judge or Munsif, as the case may be, as he thinks fit.

(3) Where, in the territories mentioned in section 11, the same local jurisdiction is assigned to two or more officers invested with the powers of a Munsif, the officer invested with the powers of a District Judge may, with the previous sanction of the Local Government, delegate his functions under sub-section (2) to an officer invested with the powers of a Subordinate Judge or to one of the officers invested with the powers of a Munsif.

*The Bengal Civil Courts Bill, 1886.**(Chapter III.—Ordinary Jurisdiction.—Sections 19-24.)**(Chapter IV.—Special Jurisdiction.—Sections 25-26.)*

(4) A Judge of a Court of Small Causes appointed to be also a Subordinate Judge or Munsif is a Subordinate Judge or Munsif, as the case may be, within the meaning of this section.

(5) The present local limits of the jurisdiction of every Civil Court (other than the High Court) shall be deemed to be fixed under this Act.

[Act VI of
1871, s. 19.]

XIV of 1882.

19. The jurisdiction of a District Judge or Subordinate Judge extends, subject to the provisions of section 15 of the Code of Civil Procedure, to all original suits for the time being cognizable by the Civil Courts.

[Act VI of
1871, s. 20.]

20. The jurisdiction of a Munsif extends to all like suits in which the amount or value of the subject-matter in dispute does not exceed one thousand rupees.

[Act VI of
1871, s. 21.]

XIV of 1882.

21. (1) Save as provided by the Code of Civil Procedure or by any other enactment for the time being in force, an appeal from a decree or order of a District Judge or Additional Judge shall lie to the High Court.

(2) An appeal shall not lie to the High Court from a decree or order of an Additional Judge in any case in which, if the decree or order had been made by a District Judge, an appeal would not lie to that Court.

[Act VI of
1871, s. 22.]

XIV of 1882.

22. (1) Save as otherwise provided by the Code of Civil Procedure or by any other enactment for the time being in force, an appeal from a decree or order of a Munsif shall lie to the District Judge.

(2) Save as aforesaid, an appeal from a decree or order of a Subordinate Judge shall lie—

(a) to the District Judge where the amount or value of the subject-matter in dispute in the original suit in which or in any proceeding arising out of which the decree or order was made did not exceed five thousand rupees, and

(b) to the High Court in any other case.

(3) Where the function of receiving any appeals which lie to the District Judge under sub-section (1) or sub-section (2) has been assigned to an Additional Judge, the appeals may be preferred to the Additional Judge.

(4) The High Court may, with the previous sanction of the Local Government, order, by notification in the official Gazette, that appeals lying to the District Judge under sub-section (1) from the decrees and orders of any Munsif shall be preferred to the Court of such Subordinate Judge as may be mentioned in the notification, and the appeals shall thereupon be preferred accordingly.

[Act VI of
1871, s. 24.]

23. (1) Where in any suit or other proceeding it is necessary for any Court under this Act to decide any question regarding succession, inheritance, marriage or caste or any religious usage or institution, the Muhammadan law in cases where the parties are Muhammadans, and the Hindu law in cases where the parties are Hindus,

shall form the rule of decision, except in so far as that law has by legislative enactment been altered or abolished.

(2) In cases not provided for by sub-section (1) or by any other law for the time being in force, the Court shall act according to justice, equity and good conscience.

24. (1) A Munsif, Subordinate Judge, Additional Judge or District Judge shall not try any suit to which he is a party or in which he is personally interested, or adjudicate upon any proceeding connected with or arising out of any such suit.

(2) A Subordinate Judge, Additional Judge or District Judge shall not try an appeal against a decree or order passed by himself in another capacity.

(3) When any such suit, proceeding or appeal as is referred to in sub-section (1) or sub-section (2) comes before any such Munsif, Subordinate Judge, Additional Judge or District Judge, he shall forthwith transmit the record of the case to the Court to which he is immediately subordinate, with a report of the circumstances attending the reference.

(4) The superior Court shall thereupon dispose of the case under section 25 of the Code of Civil Procedure.

(5) Nothing in this section shall be deemed to affect the extraordinary original civil jurisdiction of the High Court.

(6) For the purposes of this section the Munsif and Subordinate Judge shall be deemed to be immediately subordinate to the District Judge, and the Additional Judge and District Judge to the High Court.

CHAPTER IV.

SPECIAL JURISDICTION.

25. (1) A District Judge may transfer to any Subordinate Judge under his control any appeals pending before him from decrees or orders of Munsifs.

(2) The District Judge may withdraw any appeal so transferred, and either hear and dispose of it himself or transfer it for disposal to another competent Court under his control.

(3) Appeals transferred under this section shall be disposed of subject to the rules applicable to like appeals when disposed of by the District Judge.

26. (1) The High Court may, by general or special order, authorise any Subordinate Judge or Munsif to take cognizance of, and any District Judge to transfer to a Subordinate Judge or Munsif under his control, any of the proceedings next hereinafter mentioned or any class of those proceedings specified in the order.

(2) The proceedings referred to in sub-section (1) are the following, namely:—

(a) proceedings under Bengal Regulation V 1799 (to limit the Interference of the Zillah

The Bengal Civil Courts Bill, 1886.

(Chapter IV.—*Special Jurisdiction.*—Sections 27-28.—Chapter V.—*Misfeazance.*—Sections 29-32.—Chapter VI.—*Ministerial Officers.*—Sections 33-36.)

and City Courts of Dewanny Adawlut in the Execution of Wills and Administration to the Estates of Persons dying intestate);

(b) applications for certificates under Act No. XXVII of 1860 (for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons); and

(c) references by Collectors under section 322C of the Code of Civil Procedure.

(3) The District Judge may withdraw any such proceedings taken cognizance of by, or transferred to, a Subordinate Judge or Munsif, and may either himself dispose of them, or transfer them for disposal to any other competent Court under his control.

27. (1) Proceedings taken cognizance of by, or transferred to, a Subordinate Judge or Munsif, as the case may be, under the last foregoing section shall be disposed of by him subject to the rules applicable to like proceedings when disposed of by the District Judge:

Provided that an appeal from an order of a Munsif in any such proceeding shall lie to the District Judge.

(2) An appeal from the order of the District Judge on the appeal from the order of the Munsif under this section shall lie to the High Court if a further appeal from the order of the District Judge is allowed by the law for the time being in force.

28. The Local Government may, by notification in the official Gazette, confer, within such local limits as it thinks fit, upon any Subordinate Judge or Munsif the jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887, for the trial of suits cognizable by such Courts, up to such value not exceeding five hundred rupees in the case of a Subordinate Judge or fifty rupees in the case of a Munsif, as it thinks fit, and may withdraw any jurisdiction so conferred.

CHAPTER V.

MISFEAZANCE.

29. Any District Judge, Additional Judge, Subordinate Judge or Munsif may, for any misconduct, be suspended or removed by the Local Government.

30. (1) The High Court may, whenever it sees urgent necessity for so doing, suspend any Subordinate Judge under its control.

(2) Whenever the High Court suspends a Subordinate Judge under sub-section (1), it shall forthwith report to the Local Government the circumstances of the suspension, and the Local Government shall make such order with respect thereto as it thinks fit.

31. (1) The High Court may appoint a Commission for inquiring into the alleged misconduct of any Munsif.

(2) On receiving the report of the result of any such inquiry, the High Court may, if it thinks fit, remove the Munsif from office, or suspend him, or reduce him to a lower grade.

(3) The provisions of Act No. XXXVII of 1850 (for regulating Inquiries into the behaviour of Public Servants) shall apply to inquiries under this section, the powers conferred by that Act on the Government being exercised by the High Court.

(4) The High Court may, previous to the appointment of a Commission under this section, suspend any Munsif pending the result of the inquiry.

(5) The High Court may, without appointing any such Commission, remove or suspend any Munsif, or reduce him to a lower grade.

32. (1) Any District Judge may, whenever he sees urgent necessity for so doing, suspend any Munsif under his control.

(2) Whenever a District Judge suspends a Munsif under sub-section (1), he shall forthwith report to the High Court the circumstances of the suspension, and the High Court shall make such order with respect thereto as it thinks fit.

CHAPTER VI.

MINISTERIAL OFFICERS.

33. District Judges and Additional Judges shall appoint the ministerial officers of their respective Courts, and, subject only to the control of the Local Government, may remove or suspend those officers or fine them in an amount not exceeding one month's salary.

34. (1) The ministerial officers of the Courts of Subordinate Judges and Munsifs shall be appointed—

(a) in the case of a vacancy not likely to last, and not lasting longer than one month, by those Courts respectively, and

(b) in any other case, by the District Judge.

(2) A Subordinate Judge or Munsif may, by order, remove or suspend or fine in an amount not exceeding one month's salary, any of the ministerial officers of his Court who is guilty of any misconduct or neglect in the performance of the duties of his office.

35. Ministerial officers ordinarily employed in the service or execution of the processes of more than one Court shall be appointed, and may be removed or suspended, by the Court of highest grade by which they are employed; and any Court by which they are employed may, by order, fine them in an amount not exceeding one month's salary.

36. (1) The District Judge may, by order, suspend or remove any ministerial officer to whom section 34 or section 35 applies,

The Bengal Civil Courts Bill, 1886.
(Chapter VI.—Ministerial Officers.—Sections 37-39.—Chapter VII.—
Supplemental Provisions.—Sections 40-41.)

and may, on appeal or otherwise, reverse or modify any order made under either of those sections by any Court under his control.

(2) The District Judge shall himself be subject to the control of the Local Government in the exercise of the powers conferred on him by sub-section (1).

37. Nothing in the foregoing sections of this Chapter shall exempt any officer from any penal or other consequences to which he may be liable under any other law for the time being in force.

[Act VI of
1871, s. 37.]

38. (1) The Local Government may, at the instance of the High Court or of the District Judge, transfer from any Court in the territories under its administration to any other Court in those territories all or any of the ministerial officers of any District Judge, Additional Judge, Subordinate Judge or Munsif.

(2) The District Judge may transfer all or any of the ministerial officers of any Court under his control to any other such Court.

39. Any fine imposed under this Chapter shall, if the order imposing it so directs, be recovered by deduction from the salary of the person fined. [Act VI of 1871, s. 38.]

CHAPTER VII.

SUPPLEMENTAL PROVISIONS.

40. (1) Where a Court has from any cause ceased to have jurisdiction with respect to any case, any proceeding in relation to that case which, if that Court had not ceased to have jurisdiction, might have been had therein may be had in the Court to which the business of the former Court has been transferred. [New.]

(2) Nothing in this section applies to cases for which provision is made in section 623 or section 649 of the Code of Civil Procedure or in any other enactment for the time being in force.

41. All powers conferred by this Act may be exercised from time to time as occasion requires.

S. HARVEY JAMES,

Offg. Secy. to the Govt. of India.



The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, OCTOBER 30, 1886.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 21st October, 1886:—

NO. 26 OF 1886.

A Bill to regulate the supply of electricity for lighting and other purposes.

WHEREAS it is expedient to regulate the supply of electricity for lighting and other purposes; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called the Electricity Supply Act, 1887.

(2) It shall extend to the whole of British India; and

(3) It shall come into force at once.

2. In this Act, unless there is something repugnant in the subject or context,—

Definitions.

(1) "electricity" includes galvanism, magnetism, magneto-electricity and electro-magnetism:

(2) "telegraph", "message", "telegraph line", "post", "telegraph authority" and "local authority" have the meanings respectively assigned to those expressions in the Indian Telegraph Act, 1885: and

(3) "purpose" includes any purpose except the transmission of a message or the use of electricity in medical treatment.

3. Save as provided in this Act, electricity shall not be supplied for a price by any person for any purpose without a license.

from the Governor-General in Council authorizing the person in that behalf.

4. (1) The Governor-General in Council may Grant and contents of license. from time to time license any person to supply electricity for any purpose, and in any local area, specified in the license.

(2) The license may prescribe the duties of the licensee and provide for the revocation of the license on his failure to perform any of those duties, and generally may contain such regulations and conditions as the Governor-General in Council thinks expedient.

(3) By a license granted under this section the Governor-General in Council may, subject to such conditions as he thinks fit to impose, confer on the licensee, with respect to the placing of appliances and apparatus for the supply of electricity, any of the powers which the telegraph authority possesses under the Indian Telegraph Act, 1885, with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained by the Government or to be so established or maintained. XIII of 1885.

(4) The Governor-General in Council may from time to time amend, add to or cancel any of the regulations and conditions contained in a license, and withdraw any of the powers conferred by a license or impose amended or additional conditions with respect to the exercise of those powers.

5. (1) Section 3 shall not apply to any person Supply of electricity. supplying electricity for any by certain persons with purpose in any local area at out license. the time of the passing of this Act so far as regards the supply of electricity for that purpose within that area.

(2) If any question arises with respect to the purpose or the local area for or in which electricity was being supplied at that time, it shall be decided by an authority to be appointed by the Governor-General in Council in that behalf, and the decision of that authority on the question shall be final.

6. (1) Notwithstanding anything in the last foregoing section, the Governor-General in Council may, on the application of any person supplying electricity for any purpose in any local area at the time of the passing of this Act, grant to the person a license for that purpose in that area under the provisions of section 4.

(2) Where a license is granted under sub-section (1), it shall supersede any engagement between the person to whom it is granted and any local authority with respect to the conditions on which electricity may be supplied by that person for the purpose, and in the local area, specified in the license.

Penalty for supplying electricity without license or contravening license. 7. If a person does either of the following things, namely,—

- (a) being a person to whom section 3 is applicable, supplies electricity for a price without a license, or,
- (b) having a license under this Act, commits or suffers to be committed a breach of any duty prescribed in the license or of any regulation or condition contained therein,

he shall be punished with fine which may extend to one thousand rupees, and, in the case of a continuing offence, with a further fine which may extend to two hundred rupees for every day during which the electricity is supplied or the breach of the duty, regulation or condition continues.

8. (1) The Governor-General in Council may from time to time make such rules as he thinks expedient for protecting the public in person and property from injury by reason of contact with, or the proximity of, appliances or apparatus used in the supply of electricity, and for preventing telegraph lines from being injuriously affected by any of those appliances or apparatus.

(2) A rule under this section may apply to the appliances and apparatus of a person not having

a license under this Act as well as to those of a person having a license thereunder.

(3) In making a rule under this section, the Governor-General in Council may direct that a breach of it shall be punishable with fine which may extend to one thousand rupees and, in the case of a continuing breach, with a further fine which may extend to two hundred rupees for every day during which the breach continues.

9. (1) The Governor-General in Council shall, before making rules under the last foregoing section, publish, in such manner as he deems sufficient, a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(3) The Governor-General in Council shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(4) The publication in the *Gazette of India* of a rule purporting to be made under the last foregoing section shall be conclusive proof that it has been duly made.

(5) Rules under that section may from time to time be amended, added to or cancelled by the Governor-General in Council.

10. Nothing in this Act shall prevent any person from being prosecuted under other laws, or from being liable under that other law to any other or higher punishment or penalty than that provided by section 7 or a rule under section 8 :

Provided that a person shall not be punished twice for the same offence.

STATEMENT OF OBJECTS AND REASONS.

The primary object of this Bill is to empower the Governor-General in Council to make rules (a) for protecting the public in person and property from injury by reason of contact with, or the proximity of, appliances or apparatus used in the supply of electricity for lighting, and (b) for preventing telegraph-lines from being injuriously affected by any of those appliances or apparatus.

2. The danger to the public from electric light connections arises from the fact that currents of great strength are used in the production of the light, the currents being powerful enough to cause death to any person, or set fire to any inflammable material, coming in contact with the wires while the currents are passing, that is to say, while the lamps are being used. Protection may be afforded either by placing these wires or connections in such a position that contact with them is impossible, or by so covering them with insulating material that contact with them is innocuous.

Interference with telegraph and telephone signals is caused by obstructive currents being induced in the telegraph and telephone wires when the electric light wires pass within a certain distance of them. The remedy is to arrange that the electric light wires shall be placed sufficiently far off. It is impossible of course to determine what the safe distance is without knowing the strength of the current employed for the electric light, which again varies with the number of lamps in circuit, but the distance can be determined from time to time with reference to the maximum current to be used in any particular local area.

3. A company desiring to supply electricity in any local area for any purpose must, if the company was not supplying it in that area for that purpose at the time of the passing of the Act, obtain a license from the Governor-General in Council. By this license the

Governor-General in Council may impose such regulations and conditions as he thinks expedient, and confer on the licensee, with respect to the placing of appliances and apparatus for the supply of electricity, any of the powers which the telegraph-authority possesses under the Indian Telegraph Act, 1885, with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained by the Government or to be so established or maintained.

Companies which were supplying electricity in any local area for any purpose at the time of the passing of the Act may elect to continue supplying it without a license, and therefore without the obligations which may be imposed, or the privileges which may be conferred, by a license.

The 21st October, 1886.

T. C. HOPE.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Report of the Select Committee on the Bill to amend the law relating to Civil Courts in Bengal, the North-Western Provinces and Assam was presented to the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 21st October, 1886:—

Preliminary Report on the Bengal Civil Courts Bill, 1881.

THE Bill to amend the law relating to Civil Courts in Bengal, the North-Western Provinces and Assam was introduced into the Council of the Governor-General by the Hon'ble Mr. Stokes in 1881, was referred to a Select Committee and was circulated for opinion, but its further progress was suspended in consequence of a proposal to establish appellate benches in Bengal. That proposal having been abandoned for the present, the opinions on the Bill of 1881 have been examined, and most of the recommendations in them incorporated in the amended copy of the Bill which accompanies this Report.

The few recommendations which have not been adopted have reference to the relation of Courts of Small Causes to District Courts, and will be best considered in connection with the Provincial Small Cause Courts Bill, 1885. I propose therefore to move at the next meeting of Council that all members of the Select Committee appointed to consider and report on that Bill who are residents of, or are or have been officially connected with, Bengal, the North-Western Provinces or Assam be added to the Select Committee on the Courts Bill to which this Preliminary Report relates.

2. The following portions of the amended Bill seem to call for remark:—

- (a) *Section 5.*—A sub-section has been added on the advice of the Government of the North-Western Provinces and Oudh for the purpose of removing any doubt there may be as to the competence of a Local Government to appoint a Judge of a Court of Small Causes to be a Subordinate Judge, or to appoint a District Judge or Subordinate Judge to discharge temporarily the functions of another District Judge or Subordinate Judge, as the case may be, in addition to the performance of his own duties.
- (b) *Section 7.*—The powers vested in the High Courts at Fort William and Allahabad by the Statute 24 & 25 Vic., cap. 104, section 15, seem to render it unnecessary to provide in this and other sections of the Bill that a District Judge is in all matters connected with the administration of the Courts to act under the control of the High Court, the District Judge being already in those matters under the obligation of obeying any instructions which the High Court may be pleased to issue.
- (c) *Section 8.*—It has been objected that the provision of the Act of 1871 which requires an Additional Judge or Subordinate Judge in charge of the office of a District Judge to discharge “such of the current duties thereof as are connected with the filing of suits and appeals, the issue of processes and the like functions,” is too indefinite, and has in practice resulted in inconvenience and loss to parties. An attempt is made in sub-section (2) of section 8 of the revised Bill to define more particularly the powers which an Additional Judge or Subordinate Judge in charge of the office of a District Judge may exercise.
- (d) *Section 9.*—Objection has been taken by the High Court for the North-Western Provinces to the words “on leave” in section 9 of the Act of 1871, and to the words in the same section which empower the District Judge to transfer cases only to his own Court or to the Court of a Subordinate Judge. The High Court points out that a Subordinate Judge may be absent from his district otherwise than on leave, as, for instance, on deputation to another district, and that, where, as occasionally happens, the Court of a Subordinate Judge is for any tract of country the Court of lowest jurisdiction, it may be convenient to transfer cases from his Court to that of a Munsif. The section has in these respects been amended, and two sub-sections (3) and (4) have been added, the former being supplementary to the amendment of sub-section (1), and the latter designed to remove a difficulty which has been felt in the North-Western Provinces.
- (e) *Section 10.*—The expression of this section, which was inaccurate in the Act of 1871, has been amended in the manner proposed by Mr. Justice Prinsep.
- (f) *Section 11.*—This section has been modified in accordance with the recommendations of the Lieutenant-Governor of Bengal, the Chief Commissioner of Assam and Mr. Justice Prinsep.

- (g) *Section 16.*—A sub-section has, on the suggestion of Mr. Justice Prinsep, been added to meet the case of officers in the territories referred to in section 11 who dispose of civil business while on tour at any place within the local limits of their jurisdiction.
- (h) *Section 17.*—On the suggestion of Mr. Justice Field, a sub-section has been added to the effect that a judicial act shall not be invalid by reason only of its having been done on a holiday.
- (i) *Section 18.*—This section has been so drawn as to remove difficulties experienced in Bengal, the North-Western Provinces and Assam in the working of the corresponding section of the Act of 1871.
- (j) *Section 21.*—A sub-section has been added with reference to the cases at 13 B. L. R. 376; 10 B. L. R., App., 30; 19 W. R. 201; and 8 C. L. R. 6.
- (k) *Section 22.*—Sub-section (2) of this section has been re-drawn with advertence to the cases at 18 W. R. (F. B.) 261; 18 W. R. 316; and 19 W. R. 131.

Sub-section (3) has been added on the suggestion of Mr. Justice Prinsep.

- (l) *Section 23.*—The case at I. L. R. 7 All. 775 suggests an expansion of this section.
- (m) *Section 25.*—Sub-section (1) will empower the District Judge to transfer appeals from orders of Munsifs, as well as from their decrees, to Subordinate Judges.

Sub-section (2) has, on the suggestion of Mr. Justice Prinsep, been so drawn as to enable the District Judge to transfer to any other competent Court under his control an appeal withdrawn from the Court of a Subordinate Judge.

Sub-section (3) is suggested by the cases at 16 W. R. 235 and 18 W. R. 292.

- (n) *Section 26.*—This section has been amended in several particulars. It is proposed, on the suggestion of Mr. Justice Field, that the order of the High Court may be either general or special; on the suggestion of Mr. Justice Prinsep, that the High Court may authorise a Subordinate Judge or Munsif to take cognizance of the proceedings mentioned in the section; on the suggestion of the Government of the North-Western Provinces and Oudh, that references by Collectors under section 322C of the Code of Civil Procedure should be added to the list of proceedings; and on the suggestion of the same Government and of Mr. Justice Field and Mr. Justice Maclean, that several of the proceedings specified in section 26 of the Bill of 1881 should be excluded therefrom.
- (o) *Section 27.*—On the suggestion of Mr. Justice Prinsep, it is proposed that appeals from orders passed by Subordinate Judges in proceedings mentioned in section 26 shall, when appeals are permitted, lie to the High Court.
- (p) *Section 34.*—With respect to section 35 of the Bill of 1881, Mr. C. J. Daniell, District Judge of Moradabad, recorded the following remarks:—

"I consider it essential to the efficiency of the ministerial officers of the subordinate Civil Courts in a judgeship that a stream of promotion should be maintained from the lowest to the highest grade of these officials throughout the judgeship. If this is secured, every hard-working man knows that there are several appointments to which he can aspire, the field for his promotion is widened, and he is more encouraged to do his work well than if he had only to look to the rare vacancies in a single munsifi for advancement. On the other hand, the Judge can promote any man from any one of several situations to any other that he may be qualified for in the whole judgeship, and a stimulus is provided to efficient and industrious work which is entirely absent if the Judge can promote no one but the officials of his own office, or if, in order to promote a deserving man in a munsifi, he is obliged to place him over the heads of other men in his own office, without being at the same time able to provide any of his own officials with a step on promotion in any of the munsifis subordinate to him.

"There can, I think, be no doubt that better men are obtainable and better work done in a wide than in a narrow field of work; but this section (35), as it stands, reduces the area over which a subordinate official's career extends within the most confined limits.

"In former times, when the subordinate Civil Courts were never inspected, something might be said in favour of allowing Munsifs to nominate and promote the officials of their own Courts; but in these days Munsifs are frequently changed, while Judges are seldom changed, and a judgeship is becoming more and more the unit of judicial administration. It is as well that this should be so, for such a condition is an incentive to a more careful supervision on the part of a Judge over his subordinates, and consequently to better work on the part of all below him. This incentive, however, will fail to act if the area of nomination and selection in a judgeship is confined to single munsifis instead of extending to all the Courts in the judgeship."

The Government of the North-Western Provinces expressed concurrence in Mr. Daniell's remarks, as the Government of Bengal did in similar remarks recorded by Mr. Justice Field.

- (q) *Section 35.*—This section provides for the case of Civil Court amins and the joint process-serving establishments now maintained throughout Bengal and the North-Western Provinces under the superintendence of central nazirs and the control of the District Judge.

(r) *Section 38.*—The addition to this section was suggested by Mr. Justice Oldfield.

- (s) *Section 40.*—This section seems to be required for the purposes of applications under section 108 of the Code of Civil Procedure and other proceedings not referred to in sections 623 and 649 of that Code.

3. The publication ordered by the Council has been made as follows :—

In English.

<i>Gazette.</i>	<i>Date.</i>
Gazette of India	8th, 15th and 22nd October, 1881.
Calcutta Gazette	19th and 26th October, and 2nd November, 1881.
North-Western Provinces and Oudh Government Gazette	15th, 22nd and 29th October, 1881.
Assam Gazette	5th, 12th and 19th November, 1881.

In the Vernacular.

<i>Province.</i>	<i>Language.</i>	<i>Date.</i>
North-Western Provinces and Oudh	Urdu	26th November, and 3rd and 10th December, 1881.

4. I am of opinion that the Bill as amended should be re-published.

The 19th October, 1886.

C. P. ILBERT.

No. II.

**THE BENGAL CIVIL COURTS
BILL, 1881.**

CONTENTS.**CHAPTER I.****PRELIMINARY.****SECTIONS.**

1. Short title, local extent, commencement and application.
2. Repeal.

CHAPTER II.**CONSTITUTION OF CIVIL COURTS.**

3. Number of District Judges and Subordinate Judges.
4. Number of Munsifs.
5. Vacancies in District or Subordinate Judgeships.
6. Vacancies in Munsifships.
7. Additional Judges.
8. Temporary charge of District Judgeship.
9. Transfer of proceedings on vacation of office of Subordinate Judge.
10. Temporary charge of Munsifship.
11. Power to confer judicial powers on officers in Chutiá Nágpur, Jalpaigori, Darjiling and Assam.
12. Control of Civil Courts.
13. Present Judges to be deemed duly appointed.
14. Seals of Courts.
15. District Judges, Additional Judges, Subordinate Judges and Munsifs to be deemed Civil Courts.
16. Place of sitting of Courts.
17. Vacation.

CHAPTER III.**ORDINARY JURISDICTION.**

18. Power to fix local limits of jurisdiction.
19. Extent of original jurisdiction of District Judge or Subordinate Judge.
20. Extent of jurisdiction of Munsif.
21. Appeals from District Judges and Additional Judges.
22. Appeals from Subordinate Judges and Munsifs.

SECTIONS.

23. Certain decisions to be according to Native law.
24. Judges not to try suits in which they are interested.

CHAPTER IV.**SPECIAL JURISDICTION.**

25. Power to transfer to Subordinate Judges appeals from Munsifs.
26. Exercise by Subordinate Judge or Munsif of jurisdiction of District Court in certain proceedings.
27. Disposal of proceedings referred to in last foregoing section.
28. Power to invest Subordinate Judges and Munsifs with Small Cause Court jurisdiction.

CHAPTER V.**MISFEAZANCE.**

29. Suspension or removal of Judges by Local Government.
30. Suspension of Subordinate Judge by High Court.
31. Suspension or removal of Munsif by High Court.
32. Suspension of Munsif by District Judge.

CHAPTER VI.**MINISTERIAL OFFICERS.**

33. Appointment and removal of ministerial officers of District Judges and Additional Judges.
34. Appointment and removal of ministerial officers of Subordinate Judges and Munsifs.
35. Appointment and removal of ministerial officers on joint establishments.
36. General powers of District Judge.
37. Saving of penal and other consequences under other laws.
38. Transfer of ministerial officers.
39. Recovery of fines.

CHAPTER VII.**SUPPLEMENTAL PROVISIONS.**

40. Continuance of proceedings of abolished Courts.
41. Powers exerciseable from time to time.

The Bengal Civil Courts Bill, 1886.
(Chapter I.—Preliminary.—Sections 1-2.—Chapter II.—Constitution of Civil Courts.—Sections 3-8.)

No. II.

A Bill to consolidate and amend the law relating to Civil Courts in Bengal, the North-Western Provinces and Assam.

WHEREAS it is expedient to consolidate and amend the law relating to Civil Courts in Bengal, the North-Western Provinces and Assam; It is hereby enacted as follows :—

CHAPTER I.
PRELIMINARY.

[Act VI of 1871, s. 1.]

Short title, local extent, commencement and application.

1. (1) This Act may be called the Bengal Civil Courts Act, 1887.

(2) It extends to the territories for the time being respectively administered by the Lieutenant-Governor of Bengal, the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioner of Assam, except such portions of those territories as for the time being are not subject to the ordinary civil jurisdiction of the High Courts and except the Jhānsī Division; and

(3) It shall come into force on the first day of April, 1887.

(4) Except this section and sections 17, 23, 28, 40 and 41, nothing in this Act applies to Courts of Small Causes established under the Provincial Small Cause Courts Act, 1887.

VI of 1871.

2. (1) The Bengal Civil Courts Act, 1871, and Act No. XIX of 1877 (to enable certain District Judges to suspend and remove certain ministerial officers, and for other purposes), section 1, are hereby repealed:

(2) But all appointments, nominations, rules and orders made, jurisdiction and powers conferred, and lists published under the Bengal Civil Courts Act, 1871, or any enactment thereby repealed, shall be deemed to be respectively made, conferred and published under this Act; and

(3) Any enactment or document referring to the Bengal Civil Courts Act, 1871, or to any enactment thereby repealed, shall be construed to refer to this Act or to the corresponding portion thereof.

CHAPTER II.

CONSTITUTION OF CIVIL COURTS.

[Act VI of 1871, ss. 3 & 4.]

3. The Local Government may reduce, and, with the previous sanction of the Governor-General in Council, increase, the number of District Judges and Subordinate Judges now fixed.

[Act VI of 1871, s. 4.]

4. The Local Government may, subject to the control of the Governor-General in Council, alter the number of Munsifs now fixed:

Provided that, except in the case of Munsifs of a grade the salary of which does not exceed two hundred and fifty rupees per mensem, an increase of the number of Munsifs now fixed shall not be made by the Local Government without the previous sanction of the Governor General in Council.

5. (1) Whenever the office of District Judge or Subordinate Judge is vacant by reason of the death, resignation or removal of the Judge or other cause, or whenever the Governor General in Council has sanctioned an increase of the number of District Judges or Subordinate Judges, the Local Government shall fill up the vacancy or appoint the additional District Judges or Subordinate Judges, as the case may be.

(2) Nothing in this section shall be construed to prevent a Local Government from appointing any Judge of a Court of Small Causes to be also a Subordinate Judge, or from appointing a District Judge or Subordinate Judge to discharge, for such period as it thinks fit, in addition to the functions devolving on him as such District Judge or Subordinate Judge, all or any of the functions of another District Judge or Subordinate Judge, as the case may be.

6. (1) Whenever the office of Munsif is vacant, or whenever the Local Government increases the number of Munsifs, the High Court shall nominate such person as it thinks fit to be a Munsif, and the Local Government shall appoint him accordingly.

(2) The Local Government may, with the previous sanction of the Governor General in Council, make rules as to the qualifications of persons to be appointed to the office of Munsif.

(3) When rules have been made under sub-section (2), a person shall not be nominated under sub-section (1) unless he possesses the qualifications required by the rules.

7. (1) When the business pending before any District Judge requires the aid of Additional Judges for its speedy disposal, the Local Government may, upon the recommendation of the High Court, and with the previous sanction of the Governor General in Council, appoint such Additional Judges as may be requisite.

(2) Additional Judges so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to them, and, in the discharge of those functions, they shall exercise the same powers and be subject to the same control as the District Judge.

8. (1) In the event of the death, resignation or removal of the District Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held, the Additional Judge, or, if an Additional Judge is not attached to the Court, the senior Subordinate Judge present at the place where the office of the District Judge is situate, shall, without relinquishing his ordinary duties, assume charge of that office, and shall continue in charge thereof until the office is resumed by the District Judge or assumed by an officer duly appointed thereto.

(2) While in charge of the office of the District Judge, the Additional Judge or Subordinate Judge, as the case may be, may, subject to any rules which the High Court may make in this behalf, exercise any of the powers of the District

*The Bengal Civil Courts Bill, 1886.**(Chapter II.—Constitution of Civil Courts.—Sections 9-17.)**(Chapter III.—Ordinary Jurisdiction.—Section 18.)*

Judge with respect to the admission of plaints, applications and appeals, the issue and stay of process before judgment or in execution of a decree or order, and the transfer of suits and other proceedings.

[Act VI of 1871, s. 9.]

9. (1) In the event of the death, resignation or removal of a Subordinate Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held, the District Judge may transfer all or any of the proceedings pending in the Court of the Subordinate Judge either to his own Court or to any Court under his control competent to dispose of them.

(2) Proceedings transferred under this section shall be disposed of as if they had been instituted in the Court to which they are so transferred.

XIV of 1882.

(3) Notwithstanding anything in section 25 of the Code of Civil Procedure, if a suit of which the amount or value of the subject-matter exceeds fifty rupees is transferred to the Court of a Munsif under this section from the Court of a Subordinate Judge exercising with respect thereto the jurisdiction of a Judge of a Court of Small Causes, the Court of the Munsif shall not, for the purposes of the suit, be deemed to be a Court of Small Causes.

(4) For the purposes of applications which are not pending in the Court of the Subordinate Judge on the occurrence of an event referred to in sub-section (1), and with respect to which that Court has exclusive jurisdiction, the District Judge may exercise all or any of the jurisdiction of that Court.

[Act VI of 1871, s. 9.]

10. (1) A District Judge, on the occurrence within the local limits of his jurisdiction of any vacancy in the office of Munsif, may appoint such person as he thinks fit to act in the office until that person is relieved by a Munsif appointed under section 6 or his appointment is cancelled by the District Judge.

(2) The District Judge shall forthwith report to the High Court the occurrence of every such vacancy and the making and cancelling of every such appointment.

[Act VI of 1871, s. 10.]

11. (1) The Local Government may invest with the powers of any Court under this Act any officer in the Chutiá Nágpur Division, or in the Jalpaigori or Darjiling Division, or in any part of the territories administered by the Chief Commissioner of Assam except the district of Silhat, or in any other part of the territories to which this Act extends, and to which the Governor-General in Council has, by notification in the official Gazette, declared this section to apply.

(2) Nothing in sections 3 to 10 (both inclusive) or sections 30 to 39 (both inclusive) applies to any officer so invested, but all the other provisions of this Act shall apply to him so far as those provisions can be made applicable.

12. Subject to the superintendence of the High Court, the District Judge shall control all the Civil Courts within the local limits of his jurisdiction. [Act VI of 1871, s. 11.]

13. Appointments of District Judges, Additional Judges, Subordinate Judges and Munsifs made before the commencement of this Act shall be deemed to have been made in accordance with law. [Act VI of 1871, s. 12.]

14. Every Court under this Act shall use a seal of such form and dimensions as are for the time being prescribed by the Local Government. [Act VI of 1871, s. 14.]

15. Every District Judge, Additional Judge, Subordinate Judge and Munsif under this Act shall be deemed to be a Civil Court within the meaning of the Code of Civil Procedure and of this Act. [Act VI of 1871, s. 15.]

16. (1) The Local Government may, by notification in the official Gazette, fix and alter the place or places at which any Court under this Act is to be held. [Act VI of 1871, s. 16.]

(2) All such places now fixed shall be deemed to be fixed under this Act.

(3) Where the place at which a Court under this Act is to be held has not been fixed, the Court may be held at any place within the local limits of its jurisdiction.

17. (1) Subject to such orders as may be issued by the Governor General in Council, the High Court shall prepare a list of days to be observed in each year as close holidays in the Courts subordinate thereto. [Act VI of 1871, s. 17.]

(2) The list shall be published in the local official Gazette.

(3) A judicial act done by a Civil Court on a day specified in the list shall not be invalid by reason only of its having been done on that day.

CHAPTER III.

ORDINARY JURISDICTION.

18. (1) The Local Government shall fix, and may vary, the local limits of the jurisdiction of any Court under this Act. [Act VI of 1871, s. 18.]

(2) If the same local jurisdiction is assigned to two or more Subordinate Judges or to two or more Munsifs, the District Judge may assign to each of them such civil business cognizable by the Subordinate Judge or Munsif, as the case may be, as he thinks fit.

(3) Where, in the territories mentioned in section 11, the same local jurisdiction is assigned to two or more officers invested with the powers of a Munsif, the officer invested with the powers of a District Judge may, with the previous sanction of the Local Government, delegate his functions under sub-section (2) to an officer invested with the powers of a Subordinate Judge or to one of the officers invested with the powers of a Munsif.

*The Bengal Civil Courts Bill, 1886.**(Chapter III.—Ordinary Jurisdiction.—Sections 19-24.)**(Chapter IV.—Special Jurisdiction.—Sections 25-26.)*

(4) A Judge of a Court of Small Causes appointed to be also a Subordinate Judge or Munsif is a Subordinate Judge or Munsif, as the case may be, within the meaning of this section.

(5) The present local limits of the jurisdiction of every Civil Court (other than the High Court) shall be deemed to be fixed under this Act.

[Act VI of 1871, s. 19.]

XIV of 1882.

19. The jurisdiction of a District Judge or Subordinate Judge extends, subject to the provisions of section 15 of the Code of Civil Procedure, to all original suits for the time being cognizable by the Civil Courts.

[Act VI of 1871, s. 20.]

20. The jurisdiction of a Munsif extends to all like suits in which the amount or value of the subject-matter in dispute does not exceed one thousand rupees.

[Act VI of 1871, s. 21.]

XIV of 1882.

21. (1) Save as provided by the Code of Civil Procedure or by any other enactment for the time being in force, an appeal from a decree or order of a District Judge or Additional Judge shall lie to the High Court.

(2) An appeal shall not lie to the High Court from a decree or order of an Additional Judge in any case in which, if the decree or order had been made by a District Judge, an appeal would not lie to that Court.

[Act VI of 1871, s. 22.]

XIV of 1882.

22. (1) Save as otherwise provided by the Code of Civil Procedure or by any other enactment for the time being in force, an appeal from a decree or order of a Munsif shall lie to the District Judge.

(2) Save as aforesaid, an appeal from a decree or order of a Subordinate Judge shall lie—

(a) to the District Judge where the amount or value of the subject-matter in dispute in the original suit in which or in any proceeding arising out of which the decree or order was made did not exceed five thousand rupees, and

(b) to the High Court in any other case.

(3) Where the function of receiving any appeals which lie to the District Judge under sub-section (1) or sub-section (2) has been assigned to an Additional Judge, the appeals may be preferred to the Additional Judge.

(4) The High Court may, with the previous sanction of the Local Government, order, by notification in the official Gazette, that appeals lying to the District Judge under sub-section (1) from the decrees and orders of any Munsif shall be preferred to the Court of such Subordinate Judge as may be mentioned in the notification, and the appeals shall thereupon be preferred accordingly.

[Act VI of 1871, s. 24.]

23. (1) Where in any suit or other proceeding it is necessary for any Court under this Act to decide any question regarding succession, inheritance, marriage or caste or any religious usage or institution, the Muhammadan law in cases where the parties are Muhammadans, and the Hindu law in cases where the parties are Hindus,

shall form the rule of decision, except in so far as that law has by legislative enactment been altered or abolished.

(2) In cases not provided for by sub-section (1) or by any other law for the time being in force, the Court shall act according to justice, equity and good conscience.

24. (1) A Munsif, Subordinate Judge, Additional Judge or District Judge shall not try any suit in which they are interested, to which he is a party or in which he is personally interested, or adjudicate upon any proceeding connected with or arising out of any such suit.

(2) A Subordinate Judge, Additional Judge or District Judge shall not try an appeal against a decree or order passed by himself in another capacity.

(3) When any such suit, proceeding or appeal as is referred to in sub-section (1) or sub-section (2) comes before any such Munsif, Subordinate Judge, Additional Judge or District Judge, he shall forthwith transmit the record of the case to the Court to which he is immediately subordinate, with a report of the circumstances attending the reference.

(4) The superior Court shall thereupon dispose of the case under section 25 of the Code of Civil Procedure.

(5) Nothing in this section shall be deemed to affect the extraordinary original civil jurisdiction of the High Court.

(6) For the purposes of this section the Munsif and Subordinate Judge shall be deemed to be immediately subordinate to the District Judge, and the Additional Judge and District Judge to the High Court.

CHAPTER IV.

SPECIAL JURISDICTION.

25. (1) A District Judge may transfer to any Subordinate Judge under his control any appeals pending before him from decrees or orders of Munsifs.

(2) The District Judge may withdraw any appeal so transferred, and either hear and dispose of it himself or transfer it for disposal to another competent Court under his control.

(3) Appeals transferred under this section shall be disposed of subject to the rules applicable to like appeals when disposed of by the District Judge.

26. (1) The High Court may, by general or special order, authorise any Subordinate Judge or Munsif to take cognizance of, and any District Judge to transfer to a Subordinate Judge or Munsif under his control, any of the proceedings next hereinafter mentioned or any class of those proceedings specified in the order.

(2) The proceedings referred to in sub-section (1) are the following, namely:—

(a) proceedings under Bengal Regulation V 1799 (to limit the Interference of the Zillah

The Bengal Civil Courts Bill, 1886.

(Chapter IV.—Special Jurisdiction.—Sections 27-28.—Chapter V.—Misfeazance.—Section 29-32.—Chapter VI.—Ministerial Officers.—Section 33-36.)

and City Courts of Dewanny Adawlut in the Execution of Wills and Administration to the Estates of Persons dying intestate);

- (b) applications for certificates under Act No. XXVII of 1860 (for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons); and

(c) references by Collectors under section 322C of the Code of Civil Procedure.

(3) The District Judge may withdraw any such proceedings taken cognizance of by, or transferred to, a Subordinate Judge or Munsif, and may either himself dispose of them, or transfer them for disposal to any other competent Court under his control.

Act VI of 1871, s. 28.]

27. (1) Proceedings taken cognizance of by, or transferred to, a Subordinate Judge or Munsif, as the case may be, under the last foregoing section shall be disposed of by him subject to the rules applicable to like proceedings when disposed of by the District Judge:

Provided that an appeal from an order of a Munsif in any such proceeding shall lie to the District Judge.

(2) An appeal from the order of the District Judge on the appeal from the order of the Munsif under this section shall lie to the High Court if a further appeal from the order of the District Judge is allowed by the law for the time being in force.

Act VI of 1871, s. 29.]

28. The Local Government may, by notification in the official Gazette, confer, within such local limits as it thinks fit, upon any Subordinate Judge or Munsif the jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887, for the trial of suits cognizable by such Courts, up to such value not exceeding five hundred rupees in the case of a Subordinate Judge or fifty rupees in the case of a Munsif, as it thinks fit, and may withdraw any jurisdiction so conferred.

CHAPTER V.

MISFEAZANCE.

Act VI of 1871, s. 31.]

29. Any District Judge, Additional Judge, Subordinate Judge or Munsif may, for any misconduct, be suspended or removed by the Local Government.

Act VI of 1871, s. 32.]

30. (1) The High Court may, whenever it sees urgent necessity for so doing, suspend any Subordinate Judge under its control.

(2) Whenever the High Court suspends a Subordinate Judge under sub-section (1), it shall forthwith report to the Local Government the circumstances of the suspension, and the Local Government shall make such order with respect thereto as it thinks fit.

Act VI of 1871, s. 33.]

31. (1) The High Court may appoint a Commission for inquiring into the alleged misconduct of any Munsif.

(2) On receiving the report of the result of any such inquiry, the High Court may, if it thinks fit, remove the Munsif from office, or suspend him, or reduce him to a lower grade.

(3) The provisions of Act No. XXXVII of 1850 (for regulating Inquiries into the behaviour of Public Servants) shall apply to inquiries under this section, the powers conferred by that Act on the Government being exercised by the High Court.

(4) The High Court may, previous to the appointment of a Commission under this section, suspend any Munsif pending the result of the inquiry.

(5) The High Court may, without appointing any such Commission, remove or suspend any Munsif, or reduce him to a lower grade.

32. (1) Any District Judge may, whenever he sees urgent necessity for so doing, suspend any Munsif under his control. [Act VI of 1871, s. 34.]

(2) Whenever a District Judge suspends a Munsif under sub-section (1), he shall forthwith report to the High Court the circumstances of the suspension, and the High Court shall make such order with respect thereto as it thinks fit.

CHAPTER VI.

MINISTERIAL OFFICERS.

33. District Judges and Additional Judges shall appoint the ministerial officers of their respective Courts, and, subject only to the control of the Local Government, may remove or suspend those officers or fine them in an amount not exceeding one month's salary. [Act VI of 1871, s. 35.]

34. (1) The ministerial officers of the Courts of Subordinate Judges and Munsifs shall be appointed— [Act VI of 1871, s. 36.]

(a) in the case of a vacancy not likely to last, and not lasting longer than one month, by those Courts respectively, and

(b) in any other case, by the District Judge.

(2) A Subordinate Judge or Munsif may, by order, remove or suspend or fine in an amount not exceeding one month's salary, any of the ministerial officers of his Court who is guilty of any misconduct or neglect in the performance of the duties of his office.

35. Ministerial officers ordinarily employed in the service or execution of the processes of more than one Court shall be appointed, and may be removed or suspended, by the Court of highest grade by which they are employed; and any Court by which they are employed may, by order, fine them in an amount not exceeding one month's salary. [New.]

36. (1) The District Judge may, by order, suspend or remove any ministerial officer to whom section 34 or section 35 applies, [Act XIX of 1871, s. 1.]

General powers of District Judge.

The Bengal Civil Courts Bill, 1886.
(Chapter VI.—Ministerial Officers.—Sections 37-39.)
(Chapter VII.—Supplemental Provisions.—Sections 40-41.)

and may, on appeal or otherwise, reverse or modify any order made under either of those sections by any Court under his control.

(2) The District Judge shall himself be subject to the control of the Local Government in the exercise of the powers conferred on him by subsection (1).

37. Nothing in the foregoing sections of this Chapter shall exempt any officer from any penal or other consequences to which he may be liable under any other law for the time being in force.

[Act VI of
1871, s. 37.]

38. (1) The Local Government may, at the instance of the High Court or of the District Judge, transfer from any Court in the territories under its administration to any other Court in those territories all or any of the ministerial officers of any District Judge, Additional Judge, Subordinate Judge or Munsif.

(2) The District Judge may transfer all or any of the ministerial officers of any Court under his control to any other such Court.

39. Any fine imposed under this Chapter shall, if the order imposing it so directs, be recovered by deduction from the salary of the person fined. [Act VI of
1871, s. 38.]

CHAPTER VII.

SUPPLEMENTAL PROVISIONS.

40. (1) Where a Court has from any cause [New.] ceased to have jurisdiction with respect to any case, any proceeding in relation to that case which, if that Court had not ceased to have jurisdiction, might have been had therein may be had in the Court to which the business of the former Court has been transferred.

(2) Nothing in this section applies to cases for which provision is made in section 623 or section 649 of the Code of Civil Procedure or in any XIV of 18 other enactment for the time being in force.

41. All powers conferred by this Act may be Powers exerciseable exercised from time to time from time to time. as occasion requires.

S. HARVEY JAMES,
Offg. Secy. to the Govt. of India.



The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, NOVEMBER 6, 1886.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 21st October, 1886:—

No. 26 OF 1886.

A Bill to regulate the supply of electricity for lighting and other purposes.

WHEREAS it is expedient to regulate the supply of electricity for lighting and other purposes; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called the Electricity Supply Act, 1887.

(2) It shall extend to the whole of British India; and

(3) It shall come into force at once.

2. In this Act, unless there is something repugnant in the subject or context,—

(1) "electricity" includes galvanism, magnetism, magneto-electricity and electro-magnetism:

(2) "telegraph", "message", "telegraph line", "post", "telegraph authority" and "local authority" have the meanings respectively assigned to those expressions in the Indian Telegraph Act, 1885: and

(3) "purpose" includes any purpose except the transmission of a message or the use of electricity in medical treatment.

3. Save as provided in this Act, electricity shall not be supplied for a price by any person for any purpose without a license.

from the Governor-General in Council authorizing the person in that behalf.

4. (1) The Governor-General in Council may Grant and contents from time to time license of license. any person to supply electricity for any purpose, and in any local area, specified in the license.

(2) The license may prescribe the duties of the licensee and provide for the revocation of the license on his failure to perform any of those duties, and generally may contain such regulations and conditions as the Governor-General in Council thinks expedient.

(3) By a license granted under this section the Governor-General in Council may, subject to such conditions as he thinks fit to impose, confer on the licensee, with respect to the placing of appliances and apparatus for the supply of electricity, any of the powers which the telegraph authority possesses under the Indian Telegraph Act, 1885, with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained by the Government or to be so established or maintained.

(4) The Governor-General in Council may from time to time amend, add to or cancel any of the regulations and conditions contained in a license, and withdraw any of the powers conferred by a license or impose amended or additional conditions with respect to the exercise of those powers.

5. (1) Section 3 shall not apply to any person Supply of electricity supplying electricity for any by certain persons with- purpose in any local area at out license. the time of the passing of this Act so far as regards the supply of electricity for that purpose within that area.

(2) If any question arises with respect to the purpose or the local area for or in which electricity was being supplied at that time, it shall be decided by an authority to be appointed by the Governor-General in Council in that behalf, and the decision of that authority on the question shall be final.

6. (1) Notwithstanding anything in the last foregoing section, the Governor-General in Council may, on the application of any person supplying electricity for any purpose in any local area at the time of the passing of this Act, grant to the person a license for that purpose in that area under the provisions of section 4.

(2) Where a license is granted under sub-section (1), it shall supersede any engagement between the person to whom it is granted and any local authority with respect to the conditions on which electricity may be supplied by that person for the purpose, and in the local area, specified in the license.

Penalty for supplying electricity without license or contravening license. 7. If a person does either of the following things, namely,—

- (a) being a person to whom section 3 is applicable, supplies electricity for a price without a license, or,
- (b) having a license under this Act, commits or suffers to be committed a breach of any duty prescribed in the license or of any regulation or condition contained therein,

he shall be punished with fine which may extend to one thousand rupees, and, in the case of a continuing offence, with a further fine which may extend to two hundred rupees for every day during which the electricity is supplied or the breach of the duty, regulation or condition continues.

8. (1) The Governor-General in Council may from time to time make such rules as he thinks expedient for protecting the public in person and property from injury by reason of contact with, or the proximity of, appliances or apparatus used in the supply of electricity, and for preventing telegraph lines from being injuriously affected by any of those appliances or apparatus.

(2) A rule under this section may apply to the appliances and apparatus of a person not having

a license under this Act as well as to those of a person having a license thereunder.

(3) In making a rule under this section, the Governor-General in Council may direct that a breach of it shall be punishable with fine which may extend to one thousand rupees and, in the case of a continuing breach, with a further fine which may extend to two hundred rupees for every day during which the breach continues.

9. (1) The Governor-General in Council shall, before making rules under the last foregoing section, publish, in such manner as he deems sufficient, a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(3) The Governor-General in Council shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(4) The publication in the *Gazette of India* of a rule purporting to be made under the last foregoing section shall be conclusive proof that it has been duly made.

(5) Rules under that section may from time to time be amended, added to or cancelled by the Governor-General in Council.

10. Nothing in this Act shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence under section 7 or against a rule under section 8, or from being liable under that other law to any other or higher punishment or penalty than that provided by section 7 or a rule under section 8:

Provided that a person shall not be punished twice for the same offence.

STATEMENT OF OBJECTS AND REASONS.

THE primary object of this Bill is to empower the Governor-General in Council to make rules (a) for protecting the public in person and property from injury by reason of contact with, or the proximity of, appliances or apparatus used in the supply of electricity for lighting, and (b) for preventing telegraph-lines from being injuriously affected by any of those appliances or apparatus.

2. The danger to the public from electric light connections arises from the fact that currents of great strength are used in the production of the light, the currents being powerful enough to cause death to any person, or set fire to any inflammable material, coming in contact with the wires while the currents are passing, that is to say, while the lamps are being used. Protection may be afforded either by placing these wires or connections in such a position that contact with them is impossible, or by so covering them with insulating material that contact with them is innocuous.

Interference with telegraph and telephone signals is caused by obstructive currents being induced in the telegraph and telephone wires when the electric light wires pass within a certain distance of them. The remedy is to arrange that the electric light wires shall be placed sufficiently far off. It is impossible of course to determine what the safe distance is without knowing the strength of the current employed for the electric light, which again varies with the number of lamps in circuit, but the distance can be determined from time to time with reference to the maximum current to be used in any particular local area.

3. A company desiring to supply electricity in any local area for any purpose must, if the company was not supplying it in that area for that purpose at the time of the passing of the Act, obtain a license from the Governor-General in Council. By this license the

Governor-General in Council may impose such regulations and conditions as he thinks expedient, and confer on the licensee, with respect to the placing of appliances and apparatus for the supply of electricity, any of the powers which the telegraph-authority possesses under the Indian Telegraph Act, 1885, with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained by the Government or to be so established or maintained.

Companies which were supplying electricity in any local area for any purpose at the time of the passing of the Act may elect to continue supplying it without a license, and therefore without the obligations which may be imposed, or the privileges which may be conferred, by a license.

The 21st October, 1886.

T. C. HOPE.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Report of the Select Committee on the Bill to amend the law relating to Civil Courts in Bengal, the North-Western Provinces and Assam was presented to the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 21st October, 1886:—

Preliminary Report on the Bengal Civil Courts Bill, 1881.

THE Bill to amend the law relating to Civil Courts in Bengal, the North-Western Provinces and Assam was introduced into the Council of the Governor-General by the Hon'ble Mr. Stokes in 1881, was referred to a Select Committee and was circulated for opinion, but its further progress was suspended in consequence of a proposal to establish appellate benches in Bengal. That proposal having been abandoned for the present, the opinions on the Bill of 1881 have been examined, and most of the recommendations in them incorporated in the amended copy of the Bill which accompanies this Report.

The few recommendations which have not been adopted have reference to the relation of Courts of Small Causes to District Courts, and will be best considered in connection with the Provincial Small Cause Courts Bill, 1885. I propose therefore to move at the next meeting of Council that all members of the Select Committee appointed to consider and report on that Bill who are residents of, or are or have been officially connected with, Bengal, the North-Western Provinces or Assam be added to the Select Committee on the Courts Bill to which this Preliminary Report relates.

2. The following portions of the amended Bill seem to call for remark:—

- (a) *Section 5.*—A sub-section has been added on the advice of the Government of the North-Western Provinces and Oudh for the purpose of removing any doubt there may be as to the competence of a Local Government to appoint a Judge of a Court of Small Causes to be a Subordinate Judge, or to appoint a District Judge or Subordinate Judge to discharge temporarily the functions of another District Judge or Subordinate Judge, as the case may be, in addition to the performance of his own duties.
- (b) *Section 7.*—The powers vested in the High Courts at Fort William and Allahabad by the Statute 24 & 25 Vic., cap. 104, section 15, seem to render it unnecessary to provide in this and other sections of the Bill that a District Judge is in all matters connected with the administration of the Courts to act under the control of the High Court, the District Judge being already in those matters under the obligation of obeying any instructions which the High Court may be pleased to issue.
- (c) *Section 8.*—It has been objected that the provision of the Act of 1871 which requires an Additional Judge or Subordinate Judge in charge of the office of a District Judge to discharge “such of the current duties thereof as are connected with the filing of suits and appeals, the issue of processes and the like functions,” is too indefinite, and has in practice resulted in inconvenience and loss to parties. An attempt is made in sub-section (2) of section 8 of the revised Bill to define more particularly the powers which an Additional Judge or Subordinate Judge in charge of the office of a District Judge may exercise.
- (d) *Section 9.*—Objection has been taken by the High Court for the North-Western Provinces to the words “on leave” in section 9 of the Act of 1871, and to the words in the same section which empower the District Judge to transfer cases only to his own Court or to the Court of a Subordinate Judge. The High Court points out that a Subordinate Judge may be absent from his district otherwise than on leave, as, for instance, on deputation to another district, and that, where, as occasionally happens, the Court of a Subordinate Judge is for any tract of country the Court of lowest jurisdiction, it may be convenient to transfer cases from his Court to that of a Munsif. The section has in these respects been amended, and two sub-sections (3) and (4) have been added, the former being supplementary to the amendment of sub-section (1), and the latter designed to remove a difficulty which has been felt in the North-Western Provinces.
- (e) *Section 10.*—The expression of this section, which was inaccurate in the Act of 1871, has been amended in the manner proposed by Mr. Justice Prinsep.
- (f) *Section 11.*—This section has been modified in accordance with the recommendations of the Lieutenant-Governor of Bengal, the Chief Commissioner of Assam and Mr. Justice Prinsep.

- (g) *Section 16.*—A sub-section has, on the suggestion of Mr. Justice Prinsep, been added to meet the case of officers in the territories referred to in section 11 who dispose of civil business while on tour at any place within the local limits of their jurisdiction.
- (h) *Section 17.*—On the suggestion of Mr. Justice Field, a sub-section has been added to the effect that a judicial act shall not be invalid by reason only of its having been done on a holiday.
- (i) *Section 18.*—This section has been so drawn as to remove difficulties experienced in Bengal, the North-Western Provinces and Assam in the working of the corresponding section of the Act of 1871.
- (j) *Section 21.*—A sub-section has been added with reference to the cases at 13 B. L. R. 376; 10 B. L. R., App., 30; 19 W. R. 201; and 8 C. L. R. 6.
- (k) *Section 22.*—Sub-section (2) of this section has been re-drawn with advertence to the cases at 18 W. R. (F. B.) 261; 18 W. R. 316; and 19 W. R. 131.

Sub-section (3) has been added on the suggestion of Mr. Justice Prinsep.

- (l) *Section 23.*—The case at I. L. R. 7 All. 775 suggests an expansion of this section.
- (m) *Section 25.*—Sub-section (1) will empower the District Judge to transfer appeals from orders of Munsifs, as well as from their decrees, to Subordinate Judges.

Sub-section (2) has, on the suggestion of Mr. Justice Prinsep, been so drawn as to enable the District Judge to transfer to any other competent Court under his control an appeal withdrawn from the Court of a Subordinate Judge.

Sub-section (3) is suggested by the cases at 16 W. R. 235 and 18 W. R. 292.

- (n) *Section 26.*—This section has been amended in several particulars. It is proposed, on the suggestion of Mr. Justice Field, that the order of the High Court may be either general or special; on the suggestion of Mr. Justice Prinsep, that the High Court may authorise a Subordinate Judge or Munsif to take cognizance of the proceedings mentioned in the section; on the suggestion of the Government of the North-Western Provinces and Oudh, that references by Collectors under section 322C of the Code of Civil Procedure should be added to the list of proceedings; and on the suggestion of the same Government and of Mr. Justice Field and Mr. Justice Maclean, that several of the proceedings specified in section 26 of the Bill of 1881 should be excluded therefrom.
- (o) *Section 27.*—On the suggestion of Mr. Justice Prinsep, it is proposed that appeals from orders passed by Subordinate Judges in proceedings mentioned in section 26 shall, when appeals are permitted, lie to the High Court.
- (p) *Section 34.*—With respect to section 85 of the Bill of 1881, Mr. C. J. Daniell, District Judge of Moradabad, recorded the following remarks:—

"I consider it essential to the efficiency of the ministerial officers of the subordinate Civil Courts in a judgeship that a stream of promotion should be maintained from the lowest to the highest grade of these officials throughout the judgeship. If this is secured, every hard-working man knows that there are several appointments to which he can aspire, the field for his promotion is widened, and he is more encouraged to do his work well than if he had only to look to the rare vacancies in a single munsifi for advancement. On the other hand, the Judge can promote any man from any one of several situations to any other that he may be qualified for in the whole judgeship, and a stimulus is provided to efficient and industrious work which is entirely absent if the Judge can promote no one but the officials of his own office, or if, in order to promote a deserving man in a munsifi, he is obliged to place him over the heads of other men in his own office, without being at the same time able to provide any of his own officials with a step on promotion in any of the munsifs subordinate to him."

"There can, I think, be no doubt that better men are obtainable and better work done in a wide than in a narrow field of work; but this section (35), as it stands, reduces the area over which a subordinate official's career extends within the most confined limits."

"In former times, when the subordinate Civil Courts were never inspected, something might be said in favour of allowing Munsifs to nominate and promote the officials of their own Courts; but in these days Munsifs are frequently changed, while Judges are seldom changed, and a judgeship is becoming more and more the unit of judicial administration. It is as well that this should be so, for such a condition is an incentive to a more careful supervision on the part of a Judge over his subordinates, and consequently to better work on the part of all below him. This incentive, however, will fail to act if the area of nomination and selection in a judgeship is confined to single munsifs instead of extending to all the Courts in the judgeship."

The Government of the North-Western Provinces expressed concurrence in Mr. Daniell's remarks, as the Government of Bengal did in similar remarks recorded by Mr. Justice Field.

- (q) *Section 35.*—This section provides for the case of Civil Court amins and the joint process-serving establishments now maintained throughout Bengal and the North-Western Provinces under the superintendence of central nazirs and the control of the District Judge.

- (r) *Section 38.*—The addition to this section was suggested by Mr. Justice Oldfield.

- (s) *Section 40.*—This section seems to be required for the purposes of applications under section 108 of the Code of Civil Procedure and other proceedings not referred to in sections 623 and 649 of that Code.

3. The publication ordered by the Council has been made as follows :—

<i>In English.</i>		
<i>Gazette.</i>		<i>Date.</i>
Gazette of India	...	8th, 15th and 22nd October, 1881.
Calcutta Gazette	...	19th and 26th October, and 2nd November, 1881.
North-Western Provinces and Oudh Government Gazette	...	15th, 22nd and 29th October, 1881.
Assam Gazette	...	5th, 12th and 19th November, 1881.
<i>In the Vernacular.</i>		
<i>Province.</i>	<i>Language.</i>	<i>Date.</i>
North-Western Provinces and Oudh	Urdu	26th November, and 3rd and 10th December, 1881.

4. I am of opinion that the Bill as amended should be re-published.

The 19th October, 1886.

C. P. ILBERT.

No. II.

THE BENGAL CIVIL COURTS BILL, 1881.

CONTENTS.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title, local extent, commencement and application.
2. Repeal.

CHAPTER II.

CONSTITUTION OF CIVIL COURTS.

3. Number of District Judges and Subordinate Judges.
4. Number of Munsifs.
5. Vacancies in District or Subordinate Judgeships.
6. Vacancies in Munsifships.
7. Additional Judges.
8. Temporary charge of District Judgeship.
9. Transfer of proceedings on vacation of office of Subordinate Judge.
10. Temporary charge of Munsifship.
11. Power to confer judicial powers on officers in Chutiá Nágpur, Jalpaigori, Darjiling and Assam.
12. Control of Civil Courts.
13. Present Judges to be deemed duly appointed.
14. Seals of Courts.
15. District Judges, Additional Judges, Subordinate Judges and Munsifs to be deemed Civil Courts.
16. Place of sitting of Courts.
17. Vacation.

CHAPTER III.

ORDINARY JURISDICTION.

18. Power to fix local limits of jurisdiction.
19. Extent of original jurisdiction of District Judge or Subordinate Judge.
20. Extent of jurisdiction of Munsif.
21. Appeals from District Judges and Additional Judges.
22. Appeals from Subordinate Judges and Munsifs.

SECTIONS.

23. Certain decisions to be according to Native law.
24. Judges not to try suits in which they are interested.

CHAPTER IV.

SPECIAL JURISDICTION.

25. Power to transfer to Subordinate Judges appeals from Munsifs.
26. Exercise by Subordinate Judge or Munsif of jurisdiction of District Court in certain proceedings.
27. Disposal of proceedings referred to in last foregoing section.
28. Power to invest Subordinate Judges and Munsifs with Small Cause Court jurisdiction.

CHAPTER V.

MISFEAZANCE.

29. Suspension or removal of Judges by Local Government.
30. Suspension of Subordinate Judge by High Court.
31. Suspension or removal of Munsif by High Court.
32. Suspension of Munsif by District Judge.

CHAPTER VI.

MINISTERIAL OFFICERS.

33. Appointment and removal of ministerial officers of District Judges and Additional Judges.
34. Appointment and removal of ministerial officers of Subordinate Judges and Munsifs.
35. Appointment and removal of ministerial officers on joint establishments.
36. General powers of District Judge.
37. Saving of penal and other consequences under other laws.
38. Transfer of ministerial officers.
39. Recovery of fines.

CHAPTER VII.

SUPPLEMENTAL PROVISIONS.

40. Continuance of proceedings of abolished Courts.
41. Powers exercisable from time to time.

The Bengal Civil Courts Bill, 1886.
(Chapter I.—Preliminary.—Sections 1-2.—Chapter II.—Constitution of Civil Courts.—Sections 3-8.)

No. II.

A Bill to consolidate and amend the law relating to Civil Courts in Bengal, the North-Western Provinces and Assam.

WHEREAS it is expedient to consolidate and amend the law relating to Civil Courts in Bengal, the North-Western Provinces and Assam; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

[Act VI of 1871, s. 1.] Short title, local extent, commencement and application.

1. (1) This Act may be called the Bengal Civil Courts Act, 1887.

(2) It extends to the territories for the time being respectively administered by the Lieutenant-Governor of Bengal, the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioner of Assam, except such portions of those territories as for the time being are not subject to the ordinary civil jurisdiction of the High Courts and except the Jhānsī Division; and

(3) It shall come into force on the first day of April, 1887.

(4) Except this section and sections 17, 23, 28, 40 and 41, nothing in this Act applies to Courts of Small Causes established under the Provincial Small Cause Courts Act, 1887.

VI of 1871. 2. (1) The Bengal Civil Courts Act, 1871, and Act No. XIX of 1877 (to enable certain District Judges to suspend and remove certain ministerial officers, and for other purposes), section 1, are hereby repealed:

(2) But all appointments, nominations, rules and orders made, jurisdiction and powers conferred, and lists published under the Bengal Civil Courts Act, 1871, or any enactment thereby repealed, shall be deemed to be respectively made, conferred and published under this Act; and

(3) Any enactment or document referring to the Bengal Civil Courts Act, 1871, or to any enactment thereby repealed, shall be construed to refer to this Act or to the corresponding portion thereof.

CHAPTER II.

CONSTITUTION OF CIVIL COURTS.

[Act VI of 1871, ss. 3 & 4.] 3. The Local Government may reduce, and, with the previous sanction of the Governor-General in Council, increase, the number of District Judges and Subordinate Judges now fixed.

[Act VI of 1871, s. 4.] 4. The Local Government may, subject to the control of the Governor-General in Council, alter the number of Munsifs now fixed:

Provided that, except in the case of Munsifs of a grade the salary of which does not exceed two hundred and fifty rupees per mensem, an increase of the number of Munsifs now fixed shall not be made by the Local Government without the previous sanction of the Governor General in Council.

5. (1) Whenever the office of District Judge or Subordinate Judge is vacant by reason of the death, resignation or removal of the Judge or other cause, or whenever the Governor General in Council has sanctioned an increase of the number of District Judges or Subordinate Judges, the Local Government shall fill up the vacancy or appoint the additional District Judges or Subordinate Judges, as the case may be.

(2) Nothing in this section shall be construed to prevent a Local Government from appointing any Judge of a Court of Small Causes to be also a Subordinate Judge, or from appointing a District Judge or Subordinate Judge to discharge, for such period as it thinks fit, in addition to the functions devolving on him as such District Judge or Subordinate Judge, all or any of the functions of another District Judge or Subordinate Judge, as the case may be.

6. (1) Whenever the office of Munsif is vacant, or whenever the Local Government increases the number of Munsifs, the High Court shall nominate such person as it thinks fit to be a Munsif, and the Local Government shall appoint him accordingly.

(2) The Local Government may, with the previous sanction of the Governor General in Council, make rules as to the qualifications of persons to be appointed to the office of Munsif.

(3) When rules have been made under sub-section (2), a person shall not be nominated under sub-section (1) unless he possesses the qualifications required by the rules.

7. (1) When the business pending before any District Judge requires the aid of Additional Judges for its speedy disposal, the Local Government may, upon the recommendation of the High Court, and with the previous sanction of the Governor General in Council, appoint such Additional Judges as may be requisite.

(2) Additional Judges so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to them, and, in the discharge of those functions, they shall exercise the same powers and be subject to the same control as the District Judge.

8. (1) In the event of the death, resignation or removal of the District Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held, the Additional Judge, or, if an Additional Judge is not attached to the Court, the senior Subordinate Judge present at the place where the office of the District Judge is situate, shall, without relinquishing his ordinary duties, assume charge of that office, and shall continue in charge thereof until the office is resumed by the District Judge or assumed by an officer duly appointed thereto.

(2) While in charge of the office of the District Judge, the Additional Judge or Subordinate Judge, as the case may be, subject to any rules which the High Court may make in this behalf, exercise any of the powers of the District

*The Bengal Civil Courts Bill, 1886.**(Chapter II.—Constitution of Civil Courts.—Sections 9-17.)**(Chapter III.—Ordinary Jurisdiction.—Section 18.)*

Judge with respect to the admission of plaints, applications and appeals, the issue and stay of process before judgment or in execution of a decree or order, and the transfer of suits and other proceedings.

of 9. (1) In the event of the death, resignation or removal of a Subordinate Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held, the District Judge may transfer all or any of the proceedings pending in the Court of the Subordinate Judge either to his own Court or to any Court under his control competent to dispose of them.

(2) Proceedings transferred under this section shall be disposed of as if they had been instituted in the Court to which they are so transferred.

382. (3) Notwithstanding anything in section 25 of the Code of Civil Procedure, if a suit of which the amount or value of the subject-matter exceeds fifty rupees is transferred to the Court of a Munsif under this section from the Court of a Subordinate Judge exercising with respect thereto the jurisdiction of a Judge of a Court of Small Causes, the Court of the Munsif shall not, for the purposes of the suit, be deemed to be a Court of Small Causes.

(4) For the purposes of applications which are not pending in the Court of the Subordinate Judge on the occurrence of an event referred to in subsection (1), and with respect to which that Court has exclusive jurisdiction, the District Judge may exercise all or any of the jurisdiction of that Court.

10. (1) A District Judge, on the occurrence within the local limits of his jurisdiction of any vacancy in the office of Munsif, may appoint such person as he thinks fit to act in the office until that person is relieved by a Munsif appointed under section 6 or his appointment is cancelled by the District Judge.

(2) The District Judge shall forthwith report to the High Court the occurrence of every such vacancy and the making and cancelling of every such appointment.

of 11. (1) The Local Government may invest with the powers of any Court under this Act any officer in the Chutiá Nágpur Division, or in the Jalpaigori or Darjiling Division, or in any part of the territories administered by the Chief Commissioner of Assam except the district of Silhat, or in any other part of the territories to which this Act extends, and to which the Governor-General in Council has, by notification in the official Gazette, declared this section to apply.

(2) Nothing in sections 3 to 10 (both inclusive) or sections 30 to 39 (both inclusive) applies to any officer so invested, but all the other provisions of this Act shall apply to him so far as those provisions can be made applicable.

12. Subject to the superintendence of the High Court, the District Judge shall control all the Civil Courts within the local limits of his jurisdiction. [Act VI of 1871, s. 11.]

13. Appointments of District Judges, Additional Judges, Subordinate Judges and Munsifs made before the commencement of this Act shall be deemed to have been made in accordance with law. [Act VI of 1871, s. 12.]

14. Every Court under this Act shall use a seal of such form and dimensions as are for the time being prescribed by the Local Government. [Act VI of 1871, s. 14.]

15. Every District Judge, Additional Judge, Subordinate Judge and Munsif under this Act shall be deemed to be a Civil Court within the meaning of the Code of Civil Procedure and of this Act. [Act VI of 1871, s. 15.]

16. (1) The Local Government may, by notification in the official Gazette, fix and alter the place or places at which any Court under this Act is to be held. [Act VI of 1871, s. 16.]

(2) All such places now fixed shall be deemed to be fixed under this Act.

(3) Where the place at which a Court under this Act is to be held has not been fixed, the Court may be held at any place within the local limits of its jurisdiction.

17. (1) Subject to such orders as may be issued by the Governor General in Council, the High Court shall prepare a list of days to be observed in each year as close holidays in the Courts subordinate thereto. [Act VI of 1871, s. 17.]

(2) The list shall be published in the local official Gazette.

(3) A judicial act done by a Civil Court on a day specified in the list shall not be invalid by reason only of its having been done on that day.

CHAPTER III.

ORDINARY JURISDICTION.

18. (1) The Local Government shall fix, and may vary, the local limits of the jurisdiction of any Court under this Act. [Act VI of 1871, s. 18.]

(2) If the same local jurisdiction is assigned to two or more Subordinate Judges or to two or more Munsifs, the District Judge may assign to each of them such civil business cognizable by the Subordinate Judge or Munsif, as the case may be, as he thinks fit.

(3) Where, in the territories mentioned in section 11, the same local jurisdiction is assigned to two or more officers invested with the powers of a Munsif, the officer invested with the powers of a District Judge may, with the previous sanction of the Local Government, delegate his functions under sub-section (2) to an officer invested with the powers of a Subordinate Judge or to one of the officers invested with the powers of a Munsif.

The Bengal Civil Courts Bill, 1886.
(Chapter III.—Ordinary Jurisdiction.—Sections 19-24.)
(Chapter IV.—Special Jurisdiction.—Sections 25-26.)

(4) A Judge of a Court of Small Causes appointed to be also a Subordinate Judge or Munsif is a Subordinate Judge or Munsif, as the case may be, within the meaning of this section.

(5) The present local limits of the jurisdiction of every Civil Court (other than the High Court) shall be deemed to be fixed under this Act.

[Act VI of 1871, s. 19.]

XIV of 1882.

[Act VI of 1871, s. 20.]

[Act VI of 1871, s. 21.]
XIV of 1882.

[Act VI of 1871, s. 22.]
XIV of 1882.

19. The jurisdiction of a District Judge or Subordinate Judge extends, subject to the provisions of section 15 of the Code of Civil Procedure, to all original suits for the time being cognizable by the Civil Courts.

20. The jurisdiction of a Munsif extends to all like suits in which the amount or value of the subject-matter in dispute does not exceed one thousand rupees.

21. (1) Save as provided by the Code of Civil Procedure or by any other enactment for the time being in force, an appeal from a decree or order of a District Judge or Additional Judge shall lie to the High Court.

(2) An appeal shall not lie to the High Court from a decree or order of an Additional Judge in any case in which, if the decree or order had been made by a District Judge, an appeal would not lie to that Court.

22. (1) Save as otherwise provided by the Code of Civil Procedure or by any other enactment for the time being in force, an appeal from a decree or order of a Munsif shall lie to the District Judge.

(2) Save as aforesaid, an appeal from a decree or order of a Subordinate Judge shall lie—

(a) to the District Judge where the amount or value of the subject-matter in dispute in the original suit in which or in any proceeding arising out of which the decree or order was made did not exceed five thousand rupees, and

(b) to the High Court in any other case.

(3) Where the function of receiving any appeals which lie to the District Judge under sub-section (1) or sub-section (2) has been assigned to an Additional Judge, the appeals may be preferred to the Additional Judge.

(4) The High Court may, with the previous sanction of the Local Government, order, by notification in the official Gazette, that appeals lying to the District Judge under sub-section (1) from the decrees and orders of any Munsif shall be preferred to the Court of such Subordinate Judge as may be mentioned in the notification, and the appeals shall thereupon be preferred accordingly.

[Act VI of 1871, s. 24.]

23. (1) Where in any suit or other proceeding it is necessary for any Court under this Act to decide any question regarding succession, inheritance, marriage or caste or any religious usage or institution, the Muhammadan law in cases where the parties are Muhammadans, and the Hindu law in cases where the parties are Hindus,

shall form the rule of decision, except in so far as that law has by legislative enactment been altered or abolished.

(2) In cases not provided for by sub-section (1) or by any other law for the time being in force, the Court shall act according to justice, equity and good conscience.

24. (1) A Munsif, Subordinate Judge, Additional Judge or District Judge shall not try any suit to which he is a party or in which he is personally interested, or adjudicate upon any proceeding connected with or arising out of any such suit.

(2) A Subordinate Judge, Additional Judge or District Judge shall not try an appeal against a decree or order passed by himself in another capacity.

(3) When any such suit, proceeding or appeal as is referred to in sub-section (1) or sub-section (2) comes before any such Munsif, Subordinate Judge, Additional Judge or District Judge, he shall forthwith transmit the record of the case to the Court to which he is immediately subordinate, with a report of the circumstances attending the reference.

(4) The superior Court shall thereupon dispose of the case under section 25 of the Code of Civil Procedure.

(5) Nothing in this section shall be deemed to affect the extraordinary original civil jurisdiction of the High Court.

(6) For the purposes of this section the Munsif and Subordinate Judge shall be deemed to be immediately subordinate to the District Judge, and the Additional Judge and District Judge to the High Court.

CHAPTER IV.

SPECIAL JURISDICTION.

25. (1) A District Judge may transfer to any Subordinate Judge under his control any appeals pending before him from decrees or orders of Munsifs.

(2) The District Judge may withdraw any appeal so transferred, and either hear and dispose of it himself or transfer it for disposal to another competent Court under his control.

(3) Appeals transferred under this section shall be disposed of subject to the rules applicable to like appeals when disposed of by the District Judge.

26. (1) The High Court may, by general or special order, authorise any Subordinate Judge or Munsif to take cognizance of, and any District Judge to transfer to a Subordinate Judge or Munsif under his control, any of the proceedings next hereinafter mentioned or any class of those proceedings specified in the order.

(2) The proceedings referred to in sub-section (1) are the following, namely:—

(a) proceedings under Bengal Regulation V 1799 (to limit the interference of the Zillah

The Bengal Civil Courts Bill, 1886.

(Chapter IV.—*Special Jurisdiction.*—Sections 27-28.—Chapter V.—*Misfeazance.*—Sections 29-32.—Chapter VI.—*Ministerial Officers.*—Sections 33-36.)

and City Courts of Dewanny Adawlut in the Execution of Wills and Administration to the Estates of Persons dying intestate);

(b) applications for certificates under Act No. XXVII of 1860 (for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons); and

(c) references by Collectors under section 322C of the Code of Civil Procedure.

(5) The District Judge may withdraw any such proceedings taken cognizance of by, or transferred to, a Subordinate Judge or Munsif, and may either himself dispose of them, or transfer them for disposal to any other competent Court under his control.

of 27. (1) Proceedings taken cognizance of by, or Disposal of proceedings referred to in last foregoing section. transferred to, a Subordinate Judge or Munsif, as the case may be, under the last foregoing section shall be disposed of by him subject to the rules applicable to like proceedings when disposed of by the District Judge:

Provided that an appeal from an order of a Munsif in any such proceeding shall lie to the District Judge.

(2) An appeal from the order of the District Judge on the appeal from the order of the Munsif under this section shall lie to the High Court if a further appeal from the order of the District Judge is allowed by the law for the time being in force.

of 28. The Local Government may, by notification Power to invest Subordinate Judges and Munsifs with Small Cause Court jurisdiction. in the official Gazette, confer, within such local limits as it thinks fit, upon any Subordinate Judge or Munsif the jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887, for the trial of suits cognizable by such Courts, up to such value not exceeding five hundred rupees in the case of a Subordinate Judge or fifty rupees in the case of a Munsif, as it thinks fit, and may withdraw any jurisdiction so conferred.

CHAPTER V.

MISFEAZANCE.

of 29. Any District Judge, Additional Judge, Subordinate Judge or Munsif may, for any misconduct, be suspended or removed by the Local Government.

of 30. (1) The High Court may, whenever it sees Suspension of Subordinate Judge by High Court. urgent necessity for so doing, suspend any Subordinate Judge under its control.

(2) Whenever the High Court suspends a Subordinate Judge under sub-section (1), it shall forthwith report to the Local Government the circumstances of the suspension, and the Local Government shall make such order with respect thereto as it thinks fit.

of 31. (1) The High Court may appoint a Commission for inquiring into the alleged misconduct of any Munsif.

(2) On receiving the report of the result of any such inquiry, the High Court may, if it thinks fit, remove the Munsif from office, or suspend him, or reduce him to a lower grade.

(3) The provisions of Act No. XXXVII of 1850 (for regulating Inquiries into the behaviour of Public Servants) shall apply to inquiries under this section, the powers conferred by that Act on the Government being exercised by the High Court.

(4) The High Court may, previous to the appointment of a Commission under this section, suspend any Munsif pending the result of the inquiry.

(5) The High Court may, without appointing any such Commission, remove or suspend any Munsif, or reduce him to a lower grade.

32. (1) Any District Judge may, whenever he sees urgent necessity for so doing, suspend any Munsif under his control. [Act VI of 1871, s. 34.]

(2) Whenever a District Judge suspends a Munsif under sub-section (1), he shall forthwith report to the High Court the circumstances of the suspension, and the High Court shall make such order with respect thereto as it thinks fit.

CHAPTER VI.

MINISTERIAL OFFICERS.

33. District Judges and Additional Judges shall appoint the ministerial officers of their respective Courts, and, subject only to the control of the Local Government, may remove or suspend those officers or fine them in an amount not exceeding one month's salary. [Act VI of 1871, s. 35.]

Appointment and removal of ministerial officers of Subordinate Judges and Munsifs. 34. (1) The ministerial officers of the Courts of Subordinate Judges and Munsifs shall be appointed— [Act VI of 1871, s. 36.]

(a) in the case of a vacancy not likely to last, and not lasting longer than one month, by those Courts respectively, and

(b) in any other case, by the District Judge.

(2) A Subordinate Judge or Munsif may, by order, remove or suspend or fine in an amount not exceeding one month's salary, any of the ministerial officers of his Court who is guilty of any misconduct or neglect in the performance of the duties of his office.

35. Ministerial officers ordinarily employed in the service or execution of the processes of more than one Court shall be appointed, and may be removed or suspended, by the Court of highest grade by which they are employed; and any Court by which they are employed may, by order, fine them in an amount not exceeding one month's salary. [New]

36. (1) The District Judge may, by order, suspend or remove any ministerial officer to, whom section 34 or section 35 applies, [Act XIX of 1871, s. 1.]

General powers of District Judge.



The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, DECEMBER 25, 1886.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 17th December, 1886:—

NO. 27 OF 1886.

A Bill to amend the Code of Criminal Procedure, 1882.

WHEREAS it is expedient to amend the Code of Criminal Procedure, 1882; It is hereby enacted as follows:—

1. In the definition of "Officer in charge of a Police-station" in section 4, clause (d), of the said Code there shall be substituted for the word "therefrom" the words "from the station-house", and for the words "present at the Police-station" the words "present at the station-house".

2. In section 312 of the said Code the word "four" shall be substituted for the word "two".

STATEMENT OF OBJECTS AND REASONS.

The primary object of this Bill is to amend section 312 of the Code of Criminal Procedure, 1882, the Hon'ble the Chief Justice and Judges of the High Court at Fort William having represented that, as the law at present stands, owing to the numerous absences from Calcutta of gentlemen whose names are on the special jury list, and to the necessity of excusing special jurors from attendance on sufficient grounds, it is found necessary to summon the same gentlemen very frequently, to their manifest inconvenience and to serious interference with their business avocations.

2. A Bill to amend the Code having thus become necessary, the opportunity has been taken to cure a defect which has been noticed by the Government of Bombay in the definition of the expression "Officer in charge of a Police-station."

ANDREW R. SCOBLE.

The 17th December, 1886.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.